THE NORTH CAROLINA STATE BAR

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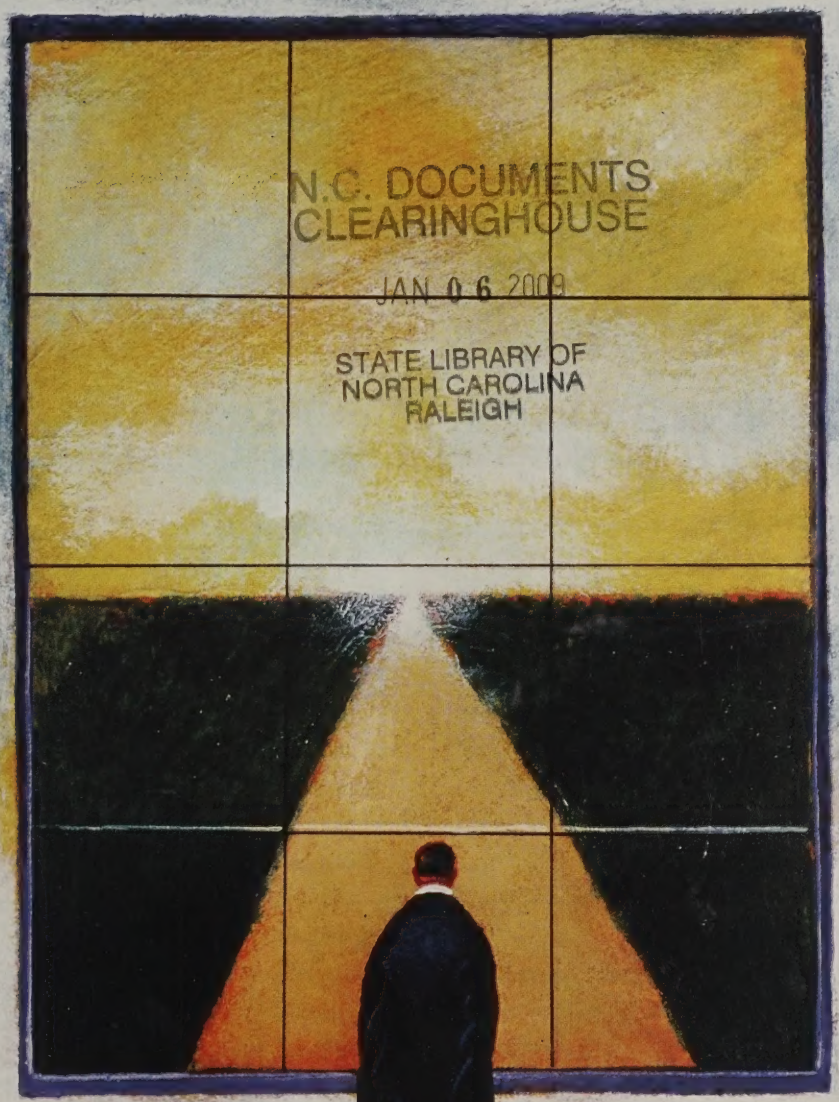

IN THIS ISSUE

DEPRESSION, STRESS, CAREER ISSUES, AND ADDICTIONS. BELIEVE IT OR NOT, THIS IS AN UPLIFTING STORY.

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FOR THE ISSUES OF LIFE IN LAW

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Jennifer R. Duncan

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Contents

FEATURES

Continued on page 4.

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Contents

DEPARTMENTS

BAR UPDATES

In the last edition of the Journal *we published Jason Sparrow's winning Fiction Writing Competition entry. The title of his work is Lost Call, not Last Call, as published.*

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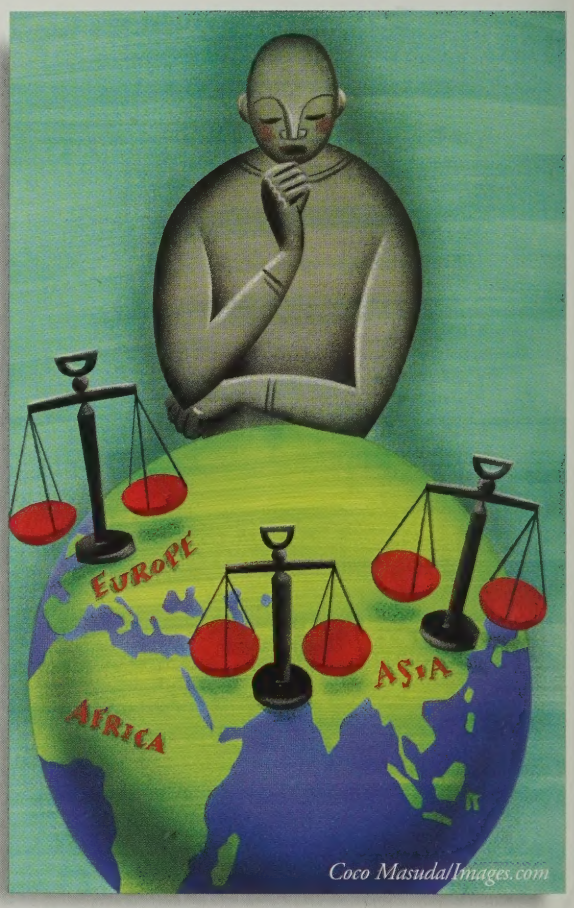
PS Form **3526**, September 2006 *(Page 2 of 3)*

Ethical Implications of Outsourcing

By Mark W. Merritt

On April 25, 2008, the State Bar Council voted to adopt 2007 FEO 12, Outsourcing Legal Support Services. That vote came after the rejection of this opinion at the October 2007 State Bar Council meeting by a single vote. Outsourcing, which is simply the practice of a law firm or in-house legal staff sending legal work to an outside contractor to perform, is not a new phenomenon. What has brought attention to this issue is the movement of outsourcing legal work to providers outside the United States—and particularly India—who perform legal work at a very modest cost.



The question raised by outsourcing abroad is whether it can be done in a manner consistent with a lawyer's ethical obligations. 2007 FEO 12 holds that outsourcing can be done ethically, but under strict conditions that protect clients. This article will examine the case for and against outsourcing, the ethical issues that outsourcing raises, and how 2007 FEO 12 addresses those issues.

What is Outsourcing?

As stated above, outsourcing occurs when a law firm or in-house legal department sends work to an outside provider to perform. For a number of years, firms have sent certain legal work, such as handling a voluminous document review or conducting legal research, to outside firms who specialize in that work and can conduct it cost-efficiently and quickly. Outsourcing allows firms to avoid hiring lawyers or paralegals for a large but temporary project. Outsourcing has not been particularly controversial when it was done domestically because it was not difficult for an attorney to evaluate the firms doing the work and to supervise the work. In addition, American courts were available to protect client confidences.

With improvements in technology, however, it became easier to outsource work abroad to lower cost locations. Documents and information can be electronically sent around the world quickly and safely, and the cost of telecommunications has dropped dramatically. Indian service providers emerged to provide electronic data management, legal research, due diligence, contract drafting, discovery, and intellectual property research.[1] Indian providers are increasingly doing more sophisticated legal work, including drafting more sophisticated contracts and pleadings.[2] Indian attorneys in established law firms, who speak English and are trained in the common law tradition, are available to perform this work at $50-70 an hour, and Indian contract attorneys who work for outsourcing firms will perform work for $20 an hour.[3]

The Case Against Outsourcing

Opponents of outsourcing raise a host of ethical concerns about legal work being done by foreign attorneys and paralegals ("foreign assistants")[4] who are not licensed here and are outside the powers of our courts. The concerns focus on whether outsourcing is promoting the unauthorized practice of law, and whether attorneys here can meet their ethical obligation to clients when work is being done at distant locations where it is more difficult to evaluate and supervise the provider.

The ethical issues are numerous:

(1) How can an attorney ensure that the foreign assistant in a distant country is competent?

(2) How does an attorney here ensure that client confidences will be respected and protected in foreign countries?[5]

(3) How does the attorney ensure that the foreign assistant has no conflicts of interest?[6]

(4) How can an attorney properly supervise a foreign attorney if there are barriers of time, language, and geography?[7]

(5) What responsibility does an attorney bear if the work done by the foreign provider is negligent but the domestic attorney relies on it in good faith?

Many attorneys who oppose outsourcing simply have a visceral negative reaction to it because it seems inconsistent with law as a profession and consistent with law as pure business driven by consideration of costs. There is concern expressed about loss of jobs and legal work to low cost foreign assistants. These concerns around professionalism and economics reinforce concerns over the ethics of outsourcing.

The Case For Outsourcing

The proponents of outsourcing point to the fact that it has occurred for a long time and that firms have utilized such services to their clients' advantage. They argue that the location of the provider is irrelevant and that the real issue is whether the attorney using the outsourcing services has taken proper steps to ensure compliance with ethical obligations. Proponents of outsourcing note that it reduces legal costs, allows smaller firms the ability to take on larger matters, and allows firms not to hire staff that may only be needed for a discrete project of limited duration. In an increasingly global economy, lawyers point to outsourcing as a strategy that allows American lawyers to be competitive with other foreign providers of legal services. There is also the concern that consumers of legal services will simply bypass domestic lawyers and engage foreign assistants directly and without the supervision and direction of domestic lawyers if outsourcing is prohibited.

How 2007 FEO 12 Addresses the Ethical Implications of Outsourcing

2007 FEO 12 finds that legal outsourcing is ethical provided that the attorney meets strict conditions and requirements in utilizing those services. As an initial matter, the opinion notes that the Ethics Committee has previously determined that a lawyer may use nonlawyer assistants in his or her practice, and that the assistants do not have to be the lawyer's employees or physically present in the lawyer's office. In addition, the opinion agrees with the proposition that the location of the "foreign assistant" is irrelevant "as long as the lawyer's use of the nonlawyer assistant's services is in accordance with the Rules of Professional Conduct."

The opinion then goes on to specify the requirements that a North Carolina lawyer has to meet to be able to outsource legal work ethically. As a threshold matter, the North Carolina lawyer is required to ensure the competency of any outsourcing firm selected. 2007 FEO 12 states that "the lawyer's initial ethical duty is to exercise due diligence in the selection of the foreign assistant." That inquiry includes determining the training and ability of the foreign assistant, the ability of

the foreign assistant to comply with all ethical rules that apply to attorneys, and the willingness of the foreign assistant to act in a manner that is consistent with the lawyer's professional obligations. 2007 FEO 12 sets a high standard for this due diligence. The opinion advises the North Carolina lawyer to obtain the foreign assistant's resume; to conduct reference checks; to interview the foreign assistant to ascertain their suitability for a particular assignment; to obtain work product samples; and to evaluate communication channels.

The opinion then sets forth the supervisory obligations imposed on the North Carolina lawyer who outsources legal work. The opinion recognizes that the lawyer outsourcing the work "must possess sufficient knowledge of the specific area of law" in order to supervise that work properly. In this regard, the opinion simply recognizes that a North Carolina lawyer who lacks knowledge of an area of law is not in a position to supervise or evaluate the work of a foreign assistant in that area. The lawyer must determine that the foreign assistant is competent to do the particular assignment. The opinion imposes an ongoing duty on the lawyer "to maintain the level of supervision necessary to advance and protect the client's interest." That includes ongoing review of the work to ensure quality; ongoing communication to ensure that the assignment is understood and being discharged in accordance with the lawyer's direction; and ongoing evaluation of the work product to ensure that it is accurate, reliable, and in the client's interest.

The opinion also makes clear that there are circumstances in which the required level of supervision cannot be met: "If physical separation, language barriers, differences in time zones, or inadequate communication channels do not allow a reasonable and adequate level of supervision to be maintained over the foreign assistant's work, the lawyer should not retain the foreign assistant to provide services." The Ethics Committee and State Bar Council make clear in this language that a lawyer must honestly evaluate his or her ability to provide the required supervision before outsourcing legal work. If that level of supervision cannot be provided, the legal work should not be outsourced.

The opinion then makes clear the lawyer's ongoing duty to exercise independent judgment and not to abdicate that role to any assistant. The opinion states that the lawyer "will be held responsible" for any work product used from the foreign assistant. The opinion prohibits a lawyer from allowing a foreign assistant to provide legal advice or services directly to the client and states that "foreign assistants may not exercise independent legal judgment in making decisions on behalf of a client."

The portion of the opinion addressing the lawyer's duty to exercise independent judgment is intended to make clear that while work may be outsourced, the lawyer's duty to exercise independent judgment in the client's interest is not. The bottom line is that the North Carolina attorney remains ethically responsible and accountable. If work product from a foreign assistant is to be used, the North Carolina lawyer must exercise his or her independent judgment to ensure that such use is in the client's best interest.

The next ethical issue addressed in the opinion is the protection of client confidences. The opinion notes the lawyer's professional obligation to protect and preserve the confidences of a client from disclosure by those to whom work is outsourced. The opinion notes that the North Carolina lawyer must ensure that procedures are in place to prevent disclosure, including an effective conflict-checking procedure. The lawyer must inform the outsourcing firm of the duty to protect confidentiality and select forms of communication to protect confidentiality during the transmission of information.[8]

Other ethics opinions on outsourcing that have addressed confidentiality have provided more detailed guidance on this topic. For example, the ABA's ethics opinion on outsourcing, adopted in August 2008, advises the lawyer to consider the sensitivity of the information provided and to investigate the security of the foreign assistant's premises, computer network, and its recycling and refuse disposal procedures.[9] The Florida Bar's opinion on outsourcing notes the importance of making sure that the foreign assistant has no access to information about other clients of the firm if the foreign assistant has remote access to the firm's computer files.[10] These opinions emphasize the need to identify points at which confidentiality may be compromised and to address them proactively to ensure compliance with ethical requirements.

The final ethical consideration addressed in 2007 FEO 12 is that of informed consent. The opinion states: "the lawyer has an ethical obligation to disclose the use of foreign, or other assistants, and to obtain the client's written informed consent to the outsourcing." Informed consent is required in recognition of the fact that clients reasonably expect the lawyer they hire to do their legal work unless they are informed to the contrary.

The topic of informed consent to outsourcing has been addressed in greater detail by other bars. The Florida Bar opinion advises that attorneys may want to disclose to the client risks associated with sharing confidential medical or financial information with a foreign outsourcing firm. The City of New York Bar opinion on outsourcing states that the informed advance consent of a client is needed if the outsourcing service provided is "to be billed to the client on a basis other than cost."[11] These opinions recognize that disclosure to the client of any issues that result from the outsourcing arrangement is necessary to ensure that the client's consent is truly "informed."

How Other Bar Entities Have Addressed Outsourcing

Prior to the release of the opinion, other bar organizations had addressed the ethical implications of outsourcing. The Florida Bar, the City of New York Bar, the Los Angeles County Bar,[12] and the San Diego County Bar[13] have all found that a lawyer may ethically outsource legal support services outside the United States provided the lawyer meets certain conditions and requirements that ensure ethical requirements are met. 2007 FEO 12 is consistent with the views of these earlier opinions, but it places more stringent requirements on a North Carolina lawyer in

the selection of an outsourcing firm.

Subsequent to the State Bar's adoption of 2007 FEO 12, the American Bar Association addressed outsourcing in Ethics Opinion 08-451. Ethics Opinion 08-451 acknowledges the outsourcing trend as "a salutary one for our globalized economy"[14] and notes its ability to reduce legal costs and enhance efficiency. Like 2007 FEO 12, the ABA opinion emphasized the importance of selecting competent outsourcing firms and recommends reference checks, background investigations, and interviews.

The ABA opinion addresses issues not considered in the North Carolina opinion that are worthy of attention. The ABA opinion points out that foreign attorneys are sometimes not trained to the level of our standards in the United States. In the selection of foreign lawyers, it advises that "the outsourcing lawyer should assess whether the system of legal education under which the lawyers were trained is comparable to that in the United States."[15] It also states that the lawyer should evaluate the "professional regulatory system" to determine if the foreign lawyer shares "core ethical principles similar to those in the United States"[16] and whether there is a disciplinary enforcement system in place that is effective in policing those attorneys. Finally, the ABA opinion urges consideration of "the legal landscape of the action to which the services are being outsourced."[17] Such consideration is needed to ensure that claims of client confidentiality will be respected and that disputes over protecting client confidences can be promptly and effectively resolved to prevent prejudice to the client.[18]

These factors identified in the ABA opinion should also be considered by a North Carolina lawyer considering outsourcing legal work to a foreign country. The training and regulation of a foreign attorney and the protection available in a foreign country for client confidences are all factors that may affect whether a client's interest is protected in an outsourcing arrangement. Although not specifically addressed in 2007 FEO 12, they are factors that should be addressed to ensure that outsourcing can be done in a manner consistent with ethical obligations.

Conclusion

2007 FEO 12 recognizes that outsourcing raises a host of important ethical issues. Although it concludes that outsourcing can be done ethically, it imposes significant obligations on lawyers to fulfill their ethical obligations and to protect their clients' interests. The opinion reflects that North Carolina lawyers are part of a global economy in which outsourcing can benefit consumers of legal services, but it recognizes and emphasizes that protecting our clients requires that we outsource thoughtfully, carefully, and ethically. ■

Mark W. Merritt is an attorney with Robinson Bradshaw & Hinson in Charlotte. He has served on the State Bar Council and the Ethics Committee for three years, and he served on the subcommittee of the Ethics Committee that was responsible for drafting 2007 FEO 12. His practice focuses on complex commercial litigation.

Endnotes

1. *See* Aaron Harmon, "The Ethics of Legal Process Outsourcing - Is the Practice of Law a 'Noble Profession,' or Is It Just Another Business?," 13 *J. Tech. L & Policy* 41, 55 (2008) [hereinafter "Legal Process Outsourcing"]. This article provides an excellent overview of the business of legal outsourcing in India and the ethical issues raised by outsourcing abroad.
2. *See* D. Weiss, "Indian Lawyers Handling Outsourced Work Do More than Document Review," *ABA Journal - Law News Now*, posted May 12, 2008.
3. "Legal Process Outsourcing," at 56.
4. 2007 FEO 12 uses the term "non-lawyer assistant" and "foreign assistant" to describe "a nonlawyer or lawyer not admitted to practice in the United States" who may provide outsourcing services. In this article, the term "foreign assistant" or "foreign assistants" will be used to describe providers of outsourcing services.
5. RPC 1.6, Confidentiality of Information, requires that lawyers not reveal information acquired from a client unless a client gives informed consent or in other limited circumstances set forth in RPC 1.6(b).
6. RPC 1.7-RPC 1.11 set forth the ethical rules that address conflicts of interest. Comment 3 to RPC 1.7 provides a lawyer should adopt "reasonable procedures" to determine whether a conflict of interest exists before taking on a matter.
7. RPC 5.3 sets forth the duties of lawyers who are using non-lawyer assistants. It generally requires reasonable efforts to ensure that the non-lawyer's conduct is compatible with the ethical obligations of the lawyer.
8. A concern over outsourcing is whether disclosure to a foreign assistant would abrogate the attorney-client privilege under a theory of waiver. That topic, which is a matter of evidentiary law, is beyond the scope of this article. If a foreign assistant is working as the lawyer's agent, takes appropriate steps to preserve the privilege, and is working under the direct supervision and control of the attorney, the foreign assistant should remain within the scope of the attorney-client privilege. *See* Edna Selan Epstein, *The Attorney-Client Privilege and Work-Product Doctrine* 147-151 (4th ed. 2001).
9. *See* ABA Formal Opinion 08-451, Lawyer's Obligation When Outsourcing Legal and Nonlegal Support Services (August 5, 2008), at 3 [hereinafter "ABA opinion"].
10. *See* Professional Ethics of the Florida Bar, Opinion 07-2 (January 18, 2008) [hereinafter "Florida Bar opinion"].
11. The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 2006-3, (August 2006).
12. Los Angeles County Bar Association, Opinion No. 518, Ethical Consideration in Outsourcing of Legal Services (June 19, 2006).
13. San Diego Bar Association Ethics Opinion 2007-1.
14. *See* ABA opinion at 2.
15. *Id.* at 3.
16. *Id.* at 3-4.
17. *Id.* at 4.
18. *Id.*

The Future of Your Firm—
Succession Planning, Leader Preparation, and Talent Retention

By C. Michael Thompson

Don't look now, but there are some disturbing demographic trends coalescing around large and medium-sized law firms in North Carolina. The leadership of those firms rests primarily with those born between 1946 and 1964—the Baby Boom generation. That group begins to hit retirement age, in ever increasing numbers, in a mere two years. Many partners in that age range have already moved to take less active roles in their firms or have assumed of counsel status, and many of those firms (more than half nationally) have mandatory retirement policies to which they will soon be subject.

In spite of that, according to a recent study, well less than half of the firms in the US have succession plans in place to help select and prepare the future leadership of the firms.

From the other direction, an equally discomfiting tsunami is forming. Attrition rates are soaring, with 78% of all new hires in large law firms leaving by their fifth year, according to the National Association for Law Placement. What's more, bar admissions nationally remain flat or are declining. Within several years the large number of retiring lawyers will equal new admittees—and may begin to exceed them.

The Issue

These demographic trends, when taken together, beg a very important question: Who will be running the law firms of the future once the Baby Boomers have stepped down and much of the younger talent has been scattered? And, will they be even remotely ready to do so?

"It's hard to get lawyers to devote serious attention to management and leadership issues," says John Conley, professor of law at

UNC and creator of its course on The Law Firm. "They have retreats, bring in consultants, then go on stumbling from crisis to crisis. Some are so good that they remain constantly busy, but issues of management and succession will become even more critical now that law business—at many firms anyway—is slumping and firms are rescinding offers and/or laying off associates. To date, most firms seem to be managed in spite of themselves."

What's at Stake

First, the firm's *profitability* is affected. A study by Edge International and the University of Michigan identified six characteristics which distinguished highly profitable law firms from those with a less robust bottom line. Primary among those characteristics was a strong firm leadership that was able to convey a vision of the future which its members could accept, and was also able to translate that vision into specific firm direction. The less profitable firms had leaders who were less revered or universally respected and were not expected to exercise as much influence or authority, leaving most firm decision-making to consensus. Moreover, most law firms have learned the hard way that attrition of talent directly affects net firm profits by increasing recruitment costs and decreasing productivity—all the while losing the future leadership base of the firm.

Second, it is a safe bet that the firm's overall *performance* is affected. Decades of research on corporations, nonprofits, and professional service firms tells us that leadership directly molds organizational culture, and culture directly links to the effectiveness (or lack thereof) of organizational performance in practically every way that performance can be measured.

But third, these issues matter because they affect the firm's long-term *viability*—the ability of the firm to survive and thrive as an independent entity or to enter into mergers or combinations on its own terms. A key factor in long-term viability appears to be the existence of one or more "paragons" within the firm—people who are the cultural standard-bearers who command respect and encourage emulation through the professionalism they embody. As the paragons retire or move to less active status, there must be successors capable of engendering the same degree of respect and loyalty.

The paragons create—but the successors must sustain and consistently communicate—both a compelling vision of what the firm can be in the future and the current expectations necessary to get there. Viability can become threatened whenever short-term motivations begin to eclipse the vision of a shared enterprise with larger goals. In the words of one managing partner, are the firm's members out to "strip mine the firm every year, or do they wish to invest in the future?" When the firm lacks effective and forward-thinking leadership, it can easily fall prey to short-term "eat what you kill" compensation systems, the demand for which has led to many mass lateral defections. In a study of 80 firms that dissolved between 1998 and 2004, such lateral departures played a key role in the demise of almost all of them.

What's To Be Done?

Most of us went to law school because we valued independent work and initiative. The thought of being part of a corporate hierarchy was an anathema to many of us. That attitude continues with a certain disdain for management trends and "leadership development" (and the widely-heard joke that "BS" stands for Business School). However, if we choose completely to ignore what our corporate clients have learned over the last 40 years about how to run a business, we do so at our own peril.

Fads and trends aside (and I'm as unimpressed with them as anyone), there are some fundamental approaches to succession planning, leader preparation, and talent retention for the future that have proven their mettle in the worlds of business, nonprofits, the military, and our brethren in the accounting profession. There is nothing about lawyers—save perhaps our own mindset—that would make these tenets any less valuable for your firm's profitability, productivity, and future viability.

1. Assessing your firm's culture. Since you are swimming in that water yourself, you are unlikely to see it objectively. But understanding it and how it differentiates you is a critical first step to determining everything from your most desirable governance structure to your most effective retention strategies—and there are tools of impressive sophistication and validity which can help you to accomplish that understanding.

2. Planning for inevitable changes. You would not think of trusting your financial future to the whim of random events; you do what you can to plan, often with specialized help. Why, then, do so many lawyers worry about their firm's future financial health and viability but take no steps to plan for it? Succession planning has been done successfully for several decades now by almost all of your larger corporate clients. They wouldn't think of not having one, if for no other reason than the realization that human beings do not live, or work, forever. The tools that consultants can employ in the succession planning process have become increasingly sophisticated in recent years, yet highly adaptable to an organization's own situation and desires. They have proven their worth by providing organizations with smooth and consensual leadership transitions to qualified, prepared, and highly respected successors.

3. Preparing your best people. All leadership is contextual, and the style and skills most suitable for one firm will not be suitable for all (another argument for understanding the firm's individual culture). But 40 years of study at Greensboro's world-renowned Center for Creative Leadership has shown that, for any context, development of leadership ability begins with a) a thorough understanding of one's own self, tendencies, traits, and "wiring," b) a clear understanding of how one is perceived by others, and c) a self-chosen plan to do something about all of that. By identifying and encouraging the "emerging paragons" and others chosen in the succession planning process to undertake such self-development, the firm can take an enormous step in preparing them for future firm leadership roles.

4. Making changes. If making changes in the firm's culture is deemed desirable, it is eminently possible. Law firms are no different from any other human association in that relatively small, targeted changes can have major effects on culture over time. For example, in one survey of "Generation X" associates (born between 1965 and 1979), compensation ranked 10th on a list of 17 factors of job satisfaction. What are the top nine, and how could your firm's policies and practices be tweaked in order to be more responsive to them? If they were, might your firm have less of an issue with associate retention?

5. Improving retention. There is no magic formula for this, and a certain amount of attrition is both necessary and healthy for all concerned. But when I think back about the small firm I joined right out of law school, I am struck by two facts: none of the associates with whom I practiced ultimately stayed with the firm, and *all* of them now occupy significant leadership positions in other North Carolina law firms. In accord with the old Joni Mitchell song, "you don't know what you've got 'til it's gone," our firms often lose their best talent to their competitors because they don't know how—apart from money—to keep them there. It is only by understanding your firm's culture and demographics, investing in development, and making desirable changes to the firm's culture and practices that you give yourself the best chance of keeping those people who will positively shape the future.

Objection!

"There's not enough time in the day; or more aptly, in the year. How do I tell a 38-year-old partner with a 2400 hour billing expectation for the year that I want him to spend time on something else?"

Objection noted. But I'd argue that in framing the issue in that way, you are ignoring a very important perspective. That "something else" is at least as important as business development; for while hitting your billable hour targets and bringing in new clients are certainly important for the firm in the current year, and hopefully the next, the issues here discussed are critical to the firm's success in the years and decades to come. Given the demographic trends, how can the firm afford *not* to address the issues of profitability, productivity, and viability which the trends imply? The adage "failing to plan is planning to fail" couldn't be more appropriate.

Organizations should reward what they value. That begins by rewarding partners for mentoring, developing, motivating, and retaining your best associates. But in addition, firms can and should encourage high-performing associates and emerging paragons to participate in firm leadership activities or in personal leadership preparation by making commensurate adjustments in billable hour expectations. "It's understandable," says Charles Volkert of Robert Half Legal, "that succession planning may sometimes take a back seat to billable work or urgent legal matters. But law offices should not wait until a leader departs to begin the process."

Identify those who might be running the firm of the future, give them time and permission to engage in self-development, and include them in the kind of firm discussions that will allow these succession candidates to build their knowledge and skills in areas from practice management to firm strategy to marketing to client service.

Change Happens

The business model for successful professional service firms is changing. To put it in its simplest terms, it is moving from waiting behind your desk for the client to appear in your office with his or her problem, to anticipating the client's future needs, strategically thinking about how the firm will meet those needs, and planning accordingly. That is the essence of forward-thinking leadership these days. And it is an important reason why carefully choosing and preparing those leaders is so important. Waiting, as so many firms do, to "just see who rises to the top" or "who's willing to put in the time" is a poor substitute for advance thinking and planning—and no guarantee that your firm will possess the forward-thinking leadership the future will demand. Says Bill Morley of ExCL Group, a firm specializing in the development of leadership talent, "a thoughtful succession planning process by the managing partners is probably the only reliable way to link a law firm's long term strategic direction to the retention and development of key talent."

Ultimately, the firm will need to determine what it means by the use of that word. If it is merely a collection of individual practices held together by a name and some common office space, then there is little need for the ideas and solutions proposed here. But if it is truly a common enterprise with some basis of shared goals and norms, then there is much that can be done to enhance its profitability and performance—and its chance of still being here in ten years. ■

C. Michael Thompson practiced law in Raleigh before becoming senior counsel to Wachovia and later assistant dean of the Wake Forest University School of Business. His work now focuses on executive development for a wide variety of clients in business, government, and nonprofits. He counts among his past and present coaching clients practicing attorneys and corporate legal counsel. His undergraduate and JD degrees are from the University of North Carolina. Michael can be reached at cmtwsnc@aol.com.

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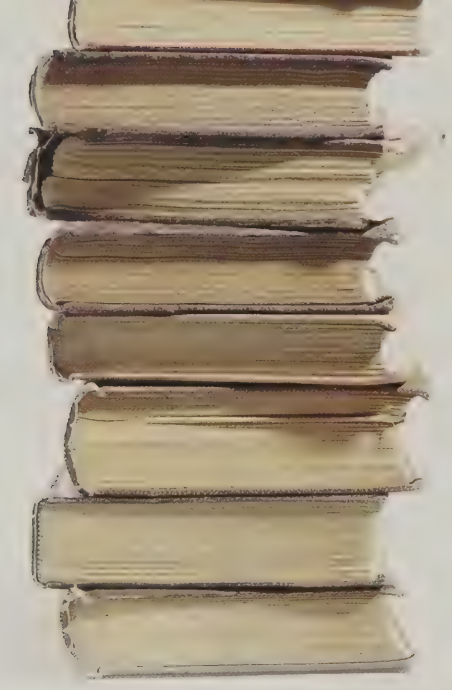


Sixth Annual Fiction Writing Competition

The Publications Committee of the *Journal* is pleased to announce that it will sponsor the Sixth Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. If you have any questions about the contest, please contact Jennifer Duncan, Director of Communications, North Carolina State Bar, 6568 Towles Rd., Wilmington, NC, 28409; ncbar@bellsouth.net; 910.397-0353.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Publications Committee of the *Journal*:

1. The competition is open to any member in good standing of the North Carolina State Bar, except current members of the Publications Committee. Authors may collaborate, but only one submission from each member will be considered.

2. Subject to the following criteria, ***the story may be on any fictional topic and may be in any form*** (humorous, anecdotal, mystery, science fiction, etc.—***the subject matter need not be law related***). Among the criteria the committee will consider in judging the articles submitted are: quality of writing; creativity; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The committee will not consider any article that, in the sole judgment of the committee, contains matter that is libelous or violates accepted community standards of good taste and decency.

3. All articles submitted to the competition become property of the North Carolina State Bar and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental, and that the article has not been previously published.

4. ***Articles should not be more than 5,000 words in length*** and should be submitted in an electronic format as either a text document or a Microsoft Word document.

5. Articles will be judged without knowledge of the identity of the author's name. Each submission should include the author's State Bar ID number, placed only on a separate cover sheet along with the name of the story.

6. All submissions must be received in proper form prior to the close of business on May 29, 2009. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, Jennifer Duncan, 6568 Towles Rd., Wilmington, NC, 28409; ncbar@bellsouth.net.

7. Depending on the number of submissions, the Publications Committee may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the committee. Contestants will be advised of the results of the competition. Honorable mentions may be announced.

8. The winning article, if any, will be published. The committee reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the committee not to be of notable quality.

Deadline is May 29, 2009

Crossing the Bridge Between Academy and Practice

By Michael E. Tigar

An editor has asked me to share some thoughts about the connection between law teaching and law practice, based on more than 40 years of doing both.

When professors and practitioners are in the same room, they sometimes refer to each other in ways that suggest there is a gap between these parts of the profession. When I hear that sort of thing, I think about being on my sailboat, which is parked down in Oriental. If you sail around the North Carolina waters and listen to the VHF radio, you hear dockmasters talking to boaters. The dockmaster always calls the boater, "captain," as in "Slow it down, Captain, when you make that turn towards the gas dock." The word is "captain," but the tone of voice says "idiot"—or something else that we can't print in this magazine. So it is at these lawyer meetings, when people call each other "professor," which translates into "irrelevant ponderous bloviator," and "counselor," which means "intellect-challenged pettifogger."

Then there is the story that goes around the law schools when recruiting season is upon us: A young fellow was at a bar and struck up conversation with a bearded elderly gent. The young man was bemoaning that his life choices were limited.

"Well," said the gent, "you could have anything you want if you would sell your soul to the devil."

"I don't think so," said the young man. "When I died, I would go to hell and that is not a nice prospect."

"Oh," replied the other, "hell is not so bad. I'll let you in on a secret. I am the devil and I can show you what hell is like. You will be back here without a second having gone by on the earth's clock."

"Well, in that case," said the young man, "I'll give it a try."

So the devil snapped his fingers and the young man found himself transported. The setting was exotic. There were cool breezes, plenty of refreshment, people were nice. The young man took it all in and signed up with the devil. He worked out the remainder of his natural life, had great success as promised, and when he died, he sure enough went to hell. Except this hell was terrible—fires burned and made things unbearably hot, labor was arduous. After a time, the sinner went in search of the devil.

He burst into the main office and there was the man he had met at the bar. The sinner began his litany of complaints.

"Wait a minute," said the devil. "This is hell. What did you expect?"

The sinner recounted their initial meeting and his introduction to the place. Awareness gleamed in the devil's eyes.

"Oh," he said, "you were in our summer associate program."

Most of this sardonic naming and storytelling is well-intentioned. I believe, however, that if you, as you read these words, think there is a gap between law teaching and law practice, you are either not seeing things correctly or you have walled yourself off from some rewarding professional experience.

First, let me adjust your vision. Think about it: In every one of America's 195 law schools (at last count), judges and practicing lawyers serve as adjunct professors. Every good law school has a clinical program, where law teachers with practice experience help students learn how to represent a client ethically, zealously, and capably. Every good law school offers trial practice, moot court, and other simulation-type learning experiences; lawyers and judges give their time to these efforts. Inns of Court bring lawyers, teachers and students together—or should start doing it if they are not already. Law professors are on CLE programs.

Look around you at the leading law schools in North Carolina. UNC dean Jack Boger practiced with Paul Weiss in New York and then was a star litigator at the NAACP Legal Defense & Education Fund for many years before joining the UNC faculty. Ken Broun, a UNC former dean (and my friend for more than 30 years), has been a real trial lawyer for all of his career as well as a brilliant teacher and writer.

At Duke, where I have just been appointed professor of the practice of law, Dean David Levi has taken the reins. He was a line prosecutor in California, United States attorney and then a federal trial judge. On the roster of Duke faculty you will find many others with substantial practice credentials. Already, Dean Levi has reached out to all parts of the legal profession and his leadership promises to enhance those relationships to the benefit of the community, the profession, and Duke itself.

In short, the parts of the profession are joined together in many different settings. Every law teacher has the opportunity to learn about what is happening in the world of law that his or her students will soon join. Every practicing lawyer can gain and regain insight into the kinds of issues that professors address as teachers and writers. When lawyers and teachers seize those opportunities, they and the profession gain.

My second point—that some people in our profession are depriving themselves from rewarding experiences—speaks more critically to all of you: practitioners, policy-makers, professors, and students. I am worried about this profession of ours. I think that we have a great deal to learn from one another.

One way to address these issues is to see the relationship between law schools and the practicing profession as a bridge and not a gap. I like the image. A bridge does not, itself, take you anywhere. It is simply there, and if you want to benefit from it you have to take the risk of crossing it to see what is on the other side. And when you get there, you should treat the people and ideas you find with respect, as you would when traveling to a foreign country where language and customs are different.

I fear that many in the profession and in law schools do not have a clear picture of what the "other side" is doing. Most law teachers spent some time in practice, but that experience may not serve them well. I know from having kept up a trial practice that the profession has changed in the past 40 years and is changing even more rapidly now. During that time, law schools have changed dramatically, as well. So our first task is to discard any assumptions we have, based on incomplete data, about what lies on the other side of the bridge.

Let me summarize some of the concerns that beset the younger generation of lawyers. Young people graduating from law school carry debt obligations that were unthinkable to those of us who entered the profession four decades ago. I read of young lawyer dissatisfaction with the profession, of poor people not having access to justice, of partner salaries heading towards the stratosphere while their firms ignore the obligation to do community service. I read of young lawyer disenchantment and older lawyer burnout.

To give substance to these thoughts, I quote at length from an essay I contributed to the recent ABA book, *Raise the Bar: Real World Solutions for a Troubled Profession*:

> Median law student educational debt increased by 59% between 1997 and 2000. In 2000, median law school debt was $84,400. In a survey of over 1,000 law school graduates, 50% reported graduating from law school with $75,000 of debt while 20% carried debts of over $105,000. More than half of the survey participants had additional debt from their undergraduate education.

Among those respondents entering government work, 58% carried debts between $55,000 and $105,000. Lawyers entering public service positions were even more likely to carry high debt burdens: 64% of entering legal service attorneys; 61% of future public defenders and 67% of future state or district attorneys completed law school with debts between $55,000 and $105,000. With a median debt amount of $84,400 for law school, the typical young attorney will spend approximately $950 per month to repay loans. A lawyer graduating with more than $100,000 in debt will make monthly payments of more than $1,000 per month. High debt loads compared to low salaries prevent many young attorneys from entering public service. Sixty-six percent of survey participants stated that law school debt kept them from considering a job in the public or government sector.

The median salary for first-year associates working in private practice ranged from $67,500 in firms of 2-25 attorneys to $125,000 in firms of more than 500 attorneys. The median first-year salary for survey participants was $100,000. In large urban areas, the median starting salary for first-year associates in large firms (over 251 attorneys) was $125,000.

In sharp contrast, the median starting salary in 2001 for attorneys entering public interest jobs was $35,000. Attorneys entering federal government jobs made a median salary of $45,000 while those working in state or local government earned a median income of $41,000.

* * *

The ABA Litigation Section conducted two informal polls in 2005. In one survey, 48% of lawyers reported that, in their firms, they are encouraged to take on *pro bono* work and are given credit for it. Twelve percent say they are encouraged to do *pro bono* work but are not given credit for it. Forty percent say they are neither encouraged nor given credit. In another survey, 79% said that their current practice did not match the expectations they had in law school, while 21% said that it did. Apparently, most of the 79% felt tyrannized by the billable hour and chagrined that the ideals that led them to

enter the profession had escaped them.

Law students learn from teachers and scholars who devote their careers to study of the most significant issues that confront the legal profession and society as a whole. They can take advantage of clinical programs, internships, externships, and the other links to the profession that law school can provide. Many of them have done significant amounts of *pro bono* work, which both serves the community and sharpens their sense of what it means to seek justice for a client. We who teach have preached the values of ethical behavior, intellectual discipline, imaginative approaches to problems, and social responsibility.

These students are ready to go to work. They know that some of the most important lessons about law practice can only be learned in the world beyond law school. They are the next generation of the profession's leaders. How can we enlist them as allies for progress and change?

Several times in the past few months, in conversations with friends, I have noted that work in law firms is increasingly divided up and done in cubicles. Lawyers e-mail drafts back and forth. This sort of thing is particularly prevalent in multi-city firms. The young lawyers on a matter do not see the case as a whole. They are not personally mentored by senior lawyers. There are fewer meetings of the project team as a whole where everybody can see how their work fits into the pattern.

Just last week, I raised this issue with a lawyer who was visiting Duke. He reminded me that clients often balk at paying for lawyer time spent in meetings to discuss the case. The answer seems clear to me. Either convince the client that those meetings in fact enhance productivity and the quality of work, or accept the fact that good quality professional law practice is not entirely about maximizing profits.

The alienation and burnout that we are seeing, in younger as well as older lawyers, squanders the valuable resource that is coming into the profession from law schools. The law firm that takes in associates, gives them unrealistic billable hour expectations, and isolates them in their work is being wasteful. It is denying itself access to the thoughtful insights and challenging questions that today's graduates bring to the process. On a long-term perspective, the firm that behaves this way is like the farmer who slaughters all the stock and eats all the crops. He or she may have a banner year, but has nothing to plant for next season, and no flock with which to carry on.

A second way in which the profession is failing its new generation is suggested by the salary statistics. The system for providing legal services to poor people is broken. Private lawyer *pro bono* work can take up some of the slack. At Duke, under the leadership of Associate Dean Carol Spruill, students have spent thousands of hours in many settings helping to provide legal services. Clinical programs serve a similar purpose. The students who do this work become better lawyers, able to see the trajectory from learning basic theory, to learning basic skills, to listening to client stories, to seeking justice. They learn lessons that classroom teaching cannot give: they learn to exercise judgment and to see the consequences of decisions. Every law firm should encourage and support *pro bono* work by young lawyers because it makes good business sense.

Of course, we should expect law students entering the profession to bear their fair share of the costs of doing business in an ethical, professional way. From my conversations with students, I think the great majority would willingly do so. How about a law firm recruitment ad that says:

LITIGATION LAW FIRM

- The salaries at our firm are lower than at our competitors, but you will still make enough money to have a good life and pay off your loans;
- Every lawyer at our firm must do 200 hours of *pro bono* work every year;
- We work in teams and as a team member you have responsibility to understand the whole case and to contribute your ideas;
- We do not worship the billable hour;
- We understand that you need time to have meaningful family and other personal relationships.

There are law firms that say these things, though not quite so bluntly. Good law students respond.

Beyond private initiative, the profession must be an articulate and strong voice for better funding of public defender and legal services programs. It should encourage loan forgiveness programs for lawyers who enter public service. Among the reasons for doing so is that our advocacy keeps faith with this new generation.

For those in practice, there are practical insights on the other side of the bridge. Let me tempt you with some examples from Duke. Professor Neil Vidmar is a social psychologist. If you have not read his work on jury behavior, your jury selection approach probably needs attention. Do you have a high-profile case? Professors Tom Metzloff, Kathy Bradley, Chris Schroeder, and others have done work that will interest you. You probably know the work of Bob Mosteller on the law of evidence. In the fields of international law, intellectual property, and many others, Duke's resources are open to the profession.

Why should you take the time to hear from and read the work of law professors when commercial publishers offer pre-packaged versions of "what you need to know?" The reason is simple, but perhaps not obvious: many modern legal research mechanisms give you a narrow and perhaps misleading view of important legal principles. Computer-driven legal research is based on your knowing what questions to ask, and in what databases. Taking time to see changes in the law in broader perspective makes your directed research more productive.

I can think of many instances from my own practice that support what I have just said. I speak from the perspective of someone who commutes across that bridge between teaching and practice. I was appointed counsel in a federal capital case. We wanted a separate trial for our client. The federal severance law is, on the whole, tilted towards joint trials for those jointly indicted. On the other hand, that law was developed almost entirely in non-capital cases. So we set out to consider why and how our capital case was different, requiring a different approach. We found two arguments that ultimately convinced the judge, one rooted in the broad constitutional principles of death penalty law and the other in legal history. The first argument was in a capital case, with jury sentencing. The Supreme Court has mandated a deep inquiry into the defendant's background and character, as well as into the circumstances of the offense. A joint trial makes this process immeasurably more difficult. The second argument was based on my having remembered a phrase from Blackstone's influential 18th century treatise on the laws of England. He had written that principles of law in capital cases were often interpreted *in favorem vitae*—in

CONTINUED ON PAGE 20

Representing the Corporate Client—Top Ten Tips for a Successful Relationship

By Marvin D. Genzer

Compared to representing an individual client, representing the corporate client presents many differences and challenges to the outside lawyer. For outside lawyers experienced with corporate clients, some of the suggestions in this article may be second nature. But for those lawyers new to corporate practice, understanding the corporate representation may take a little practice, certain skill development, and some change of tactics. This article will suggest my top ten important factors to be considered by outside counsel in the course of representation of the corporate client.

Once upon a time, outside law firms representing corporations handled much if not all of the company's legal matters. Often, a lawyer in the outside law firm was considered the company's "general counsel" and was treated as such by the company's executive management. Close, personal relationships with senior management were common and this "general counsel" was considered a member of the corporate "family." In those circumstances where the company had enough legal work to justify having lawyers on its regular payroll, these lawyers were often recruited from associates of the general counsel's firm. And bills for legal services sent to the company included nothing more than "for services rendered" as a description of the work.

Times have surely changed. Corporate executives have become much more savvy consumers of legal services. It has been many

years since the corporate client representative has not been a lawyer. Even smaller companies are more likely to have inside counsel who is responsible for all legal matters for the company. And the days of "for services rendered" bills are long gone.

In this era of a changed paradigm for the corporation/law firm relationship, what are the rules of the road? What does the corporate client expect from outside counsel? How does this relationship affect the law firm's practice of law? How does having a lawyer differ from having a layperson as a corporate client representative?

What follows are my top ten tips for representation of the corporate client. It would not be surprising to find many in-house counsel with other ideas of best practices and this list should be considered neither exclusive nor all inclusive. In the end, nothing can substitute for a good relationship with the client and a candid, up-front discussion of expectations and ground rules at the beginning of any representation.

I have refrained from putting these tips into a typical "top ten" order. The importance of any one tip may vary depending on the individual relationship and the particular views of the lay client or inside lawyer, and outside lawyer.

1 **Know your client's business.** I spent the first half of my adult career as an engineer. For the relatively rare circumstances when we had a legal matter that involved employees other than the executive staff, the number one complaint I always heard from my colleagues was the lack of understanding of our business, products, and operations by the lawyers assigned to the case.

I'm aware that the outside lawyer may be conducting an interview or soliciting information and intentionally appearing to lack basic knowledge of the business for strategic reasons. But there is a clear distinction between inquiring into business matters for purposes of gaining knowledge of how the company operates, and intentionally appearing clueless by asking seemingly basic questions to test the veracity of the witness or how he or she might conduct themselves in court. The latter may be a valuable process in the course of the representation, but the former is inexcusable.

Outside counsel must take the time, and generally at no charge to the client, to gain a reasonably thorough understanding of the client company's business, its products, staff, organization, and structure, and, if possible, its corporate culture. There is no substitute for an appreciation of the day-to-day issues faced by the company. And of course, it may go without saying how much more effective the representation will be with this appreciation. Legal matters often turn on subtleties that may not be obvious from the ordinary discovery of a legal matter, particularly when driven by schedules and pressures of the matter. Outside counsel should learn the client's business. The rewards will be immeasurable.

2 **Never provide a $10 solution for a $5 problem.** Just because the client chose to solicit help with a matter from outside counsel doesn't automatically suggest the matter is a "bet-the-company" issue. There may be significantly varying motivations to pursue a matter legally and it is particularly important to determine what these motivations are.

There may, indeed, be circumstances where the client authorizes outside counsel to spend what seems like an inordinate amount of money on a seemingly insignificant matter. While corporate motivations sometimes defy logic, complex businesses generate complex scenarios and the client is the best judge and final arbiter of this.

But the opposite circumstance is the one that may be the defining moment in the representation, and not in a positive way. When presented with alternate courses of action, in the absence of specific instructions to the contrary, the least expensive option must be chosen. If the cost of that course of action is still more expensive than the cost of the problem, another way must be found. In the likely case where the client representative is an in-house lawyer, this will be a collaborative effort. If the client representative is not a lawyer, it will be outside counsel's responsibility to determine the significance of the matter to the client and, unless there are extraordinary circumstances, to find the $4 solution to the $5 problem.

3 **Avoid surprises.** In the course of a representation for a legal matter, circumstances often change, new facts come to light, laws may change, negotiations take unexpected turns, and if the matter is a litigation, rulings sometimes come fast and often. In the course of representation, outside counsel may change a theory of the matter and counsel's opinion of the likely outcome may also change for many reasons.

In all circumstances, the client must not be the last to find out about these developments. It is important to develop a personal relationship with the client representative and in the course of that relationship ensure the client is kept informed, often and regularly. It is likely the client representative is discussing the matter within the corporation among executives far more often than outside counsel may be aware of and counsel must not allow that contact to be misrepresenting the status of a matter merely because counsel failed to keep him or her apprised of developments. Unless the relationship has progressed to the point where counsel knows the level of change that the client may want to know about, counsel should err on the side of reporting everything. A quick e-mail or phone call is even more effective than a formal letter and generally serves the purpose.

4 **Opine candidly and legally.** Frequently, representation by outside counsel may result from a need for an independent legal view. Even aside from conflicts of interest, the client may need an opinion from a lawyer not connected with the company. In the regular course of a representation, providing opinions in connection with the matter is often a frequent requirement. It is critical that these opinions be candid.

There may be temptations to temper opinions based on various factors. I am not suggesting that the lawyer will be deceptive, or intentionally misleading. But it is often easy to allow views of corporate motives or needs to influence the approach taken to legal matters that are subject to varying interpretations. Outside counsel simply cannot succumb to these temptations. Opinions must be thorough, clear, and independent of non-relevant forces.

In those cases where the client representative is also a lawyer, translating legalese will not be necessary. The conversation in these circumstances may be easier but with no less importance on candidness. This conversation may be more of an exchange of views and comparison of opinions but, in the end, the outside counsel's independent and candid legal views are important to the resolution of any matter.

5 **Make, and regularly update, cost and time forecasts.** Corporations, especially public corporations, operate on forecasts. Some fore-

casts are made public and some are kept private to the company to be used for determining personnel levels, inventories, capital outlays, tax positions, and a multitude of day-to-day company decisions. They are a mainstay of corporate operations.

Lawyers, to risk generalization, are often not proficient at forecasts. It isn't something taught in law school and private law practice doesn't generally emphasize the need for forecasts to the degree needed in corporations. But it is a skill that outside counsel must develop to effectively represent a corporate client.

For any legal matter, the client must estimate, and regularly update, costs of outside legal services. To do that, input from outside counsel is important. Forecasts of total legal costs, and periodic updates of estimates to complete a matter, are a fact of corporate life. Legal costs are, by and large, corporate overhead, and forecasts of overhead costs are critical to fiscal responsibility.

As a corollary to this need for forecasts, they also should not be based on unrealistic assumptions. All bills for legal services should be thoroughly detailed and documented, even without asking. Finally, no discussion of legal forecasts and itemization of costs would be complete without this credo: don't travel first class for an economy class client.

6 Return phone calls and/or e-mails on a timely basis. It is often found that the number one complaint from clients about lawyers is that they do not return phone calls. While it may be an annoyance for private clients not to have calls answered in a timely fashion, and the outside lawyer may indeed be otherwise occupied, not responding to calls or e-mails from corporate clients can doom a relationship.

Corporate developments often come fast and furiously. Auditor demands, executive decision processes, financial reporting, and a multitude of issues arise in the ordinary course of corporate life. When these matters require input from an outside lawyer handling a matter for the company, time constraints may be critical. The outside lawyer can and should expect that his or her corporate client representative will demand quick turnaround for a question only when time is indeed of the essence. This will be part of any good relationship. But when the call is made, a return call or e-mail must be timely and the outside lawyer needs to err on the side of caution if the time constraint isn't obvious from the inquiry. Counsel can never allow the corporate client representative to go into a meeting to discuss the case and be unprepared because outside counsel didn't return a call in a timely manner.

7 Never go over the client representative's head without notice. The old saying that you can always expect at least three different opinions from any two lawyers may hold considerable truth. In the course of representation of the corporate client, there may arise many circumstances where outside counsel and the client representative disagree. Of course, it is usually clear, in the absence of countervailing circumstances, that the client makes the decision. But what about those circumstances where outside counsel firmly believes the client representative is making a grievous error? What recourse does counsel have to alter the client's view?

The first and easy answer is what outside counsel must not do—go over the client representative's head to a higher authority in the company without prior agreement between outside counsel and the representative. The outside lawyer may have had a long, successful, and preexisting relationship with one or more senior executives in the company and be tempted to simply call one of those executives to present the issue. Nothing will sour and probably end a representation quicker than that course of action.

There may well be many occasions where there is honest disagreement about a course of action, but there should be mutual understanding between the outside lawyer and the client representative about deferring to a higher authority. This is particularly true when the representative is also a lawyer. The circumstances may require that both present the matter to the higher executive for a decision. Jointly going to a higher authority in the company is occasionally warranted, but doing it without the client representative's prior knowledge is inexcusable.

8 Don't change staff without notice and discussion. It is a fact of private practice life that there will often be personnel changes

in the course of representation of a matter. It may be more unusual for the partner who may be assigned to the case, but, particularly if the matter is one lasting years, as in litigation, changes in associates, paralegals, and legal assistants are not uncommon. Because they are expected and usual, the client will likely not be surprised when a staff change on a matter is required. The problem arises when the change is made without notice.

Similar to the requirement of tip #3 to avoid surprises, changes in personnel should be discussed before the change is made. Outside counsel needs to be candid about rates, any required retraining and familiarization with the matter, and who will absorb the cost of that familiarization. I am not suggesting that there is only one approach to the resolution of these issues. I am suggesting only that they all need to be resolved in a mutually acceptable manner, in advance. The last thing outside counsel wants is for the client to first learn of a personnel change when the monthly bill arrives.

9 Don't "over lawyer" a matter. We are all taught in law school to zealously represent our client. It is a hallmark of legal training and one of the most practiced tenets of the Rules of Professional Conduct. While it may seem like a contradiction, the problem arises when the lawyer gets too zealous.

Unless the client instructs otherwise, outside counsel should not do a lot of posturing or pontificating in the course of the representation. This may occur, for example, during negotiation of a contract with a third party on the client's behalf. While the client expects to have outside counsel's expert legal advice and analysis of the legal risks of the deal, the client also wants to get the deal done and is very attuned to the fact that billing is by the hour. Before pursuing a matter to its logical conclusion, outside counsel should make sure the client is comfortable with the degree of persistence. Counsel does not usually want to be overly aggressive or creative without discussion with the client, especially if he or she is a lawyer.

10 Talk to your inside lawyer/client as you would to a partner. If the client representative is not a lawyer, outside counsel will be particularly careful to avoid legalese and to try to explain legal principles in language that will be easily understood. Counsel should always avoid using latin expressions or quoting cases or statutes, and be particularly attuned to the client's level of understanding of the explanation.

But when discussions involve an inside lawyer, those discussions should be conducted as if he or she is outside counsel's law partner. In fact, the relationship should resemble a partnership. Together, outside and inside counsel will be dealing with a matter involving the mutual client and a joint effort is usually called for. Depending on the matter, and the preferences of the inside lawyer, his or her involvement may vary, but regardless of the level of effort, if the lawyer is always considered like a partner, the conversations will be productive.

There's my top ten suggestions for representing the corporate client. If these tips are practiced, the client will appreciate outside counsel's effort. The relationship will prosper, client retention will be likely, and outside counsel will enjoy the representation. These are the elements that make the practice of law a win/win situation for the outside law firm and the corporate client. ■

Marvin D. Genzer (Retired), is the former vice-president, general counsel, and secretary of EDO Corporation; former president of the Westchester Fairfield Corporate Counsel Association; and current treasurer of the Research Triangle Area Chapter of Association of Corporate Counsel America.

Crossing the Bridge Between Academy and Practice (cont.)

favor of life. And sure enough, we found cases from early in American history in which separate trial was granted *in favorem vitae.* Ordinarily, old trial court cases don't carry much weight, besides not being readily retrievable by ordinary search techniques. But here were cases decided by judges who were alive when the Constitution was adopted, and who could be said to have insight into what it was supposed to mean.

It is true that most law students do not have a good sense of what is truly involved in law practice, including the economic structures of small and large firms, and the way lawyers build a client base. They lack many of the insights and lessons that they can only learn on the other side of the bridge. One way to ease their transition, as I noted above, is by opening up Inns of Court to law student participation, in order to encourage informal discussion among those in different areas of the profession. Another is to make law clerks and summer associates part of work teams in ways that let students see the decision-making process.

I know that the North Carolina bar is aware of these concerns. I have known Charles Becton for more than 30 years. His career shows us how many opportunities there are for lawyers: civil rights lawyer, judge, law teacher, scholar, private practice. Bec has done it all, and led the way in doing it.

I was 20 years in the law before I heard the word "holistic," describing the idea that one cannot understand any system—including the human society at a given moment—by seeing only its parts. Rather, one must see how the system as a whole determines the behavior of its parts. Judge Jerome Frank reminded us that the law is "not what it says but what it does" and that what it does is determined by "the net operation," "the whole official set-up." The rule of decision in your case is what "trickles through," he wrote, quoting Karl Llewellyn. I tread the bridge between the academy and the profession because I cannot see what law "does" without insight from both sides. It is a worthwhile journey, and the folks you meet add value to any team of people engaged in seeking justice for clients. ■

Michael E. Tigar is professor of the practice of law at Duke Law School, and Professor Emeritus at Washington College of Law. He has been a trial and appellate lawyer, law teacher, and writer on legal subjects for more than 40 years. His books include Persuasion: The Litigator's Art, Examining Witnesses, and Fighting Injustice (a memoir). *His litigation clients have included political activists, major corporations, political leaders, and many lawyers.*

Back to the Future: Creating a 21st Century Legal Education at Elon Law School

By Catherine Dunham, Steve Friedland, and George Johnson

Viewing the environment of traditional legal education over the past 20 years from a current perch of global transformation, the picture almost seems to belong in an earlier historical era. Traditional legal education was linear, generic and without international or even national context. Law teachers taught primarily through lectures and the Socratic Method. Students were expected to learn by listening to professors teach, taking notes in class and studying in the library. For most of the 20th century, this traditional model of legal education remained dominant and static. Law students relied on casebooks and lecture for course content and, until recent years, were expected to learn, record and analyze legal thought in longhand. Prior to the true advent of the Internet and the portable computer, law student and faculty expectations of learning and process aligned neatly with few gaps or divergences. The law school experience of students mirrored the law school experience of faculty.

The 21st century has brought multiple changes in both the quality and quantity of legal education. The law schools have had to meet changing expectations of law practice in a world transformed by the internet, an economy dominated by oil and emerging powers, and international competition for legal work. Law schools saw they could no longer merely offer a single course in international law, point students toward the bar exam only upon receiving a degree, or turn out students who neither had the skills to practice law nor understood what those skills were.

These outside pressures on schools have been augmented by an inside pressure, namely, a new kind of law student. The 21st century student is proficient at numerous types of technology and is comfortable multi-tasking. This modern student possesses technical expertise that exceeds most law faculty's reach, exclusively uses the computer to record information, and expects to access the internet with ready ease for legal research and all types of communication and information. The 21st century law student evolves from another world of learning, significantly different from the educational world of their faculty.

Some law schools have recognized the need to change their direction given these external and internal pressures, and Elon University School of Law is among them. By adapting Elon University's highly successful undergraduate model of engaged learning to the law school environment, the nascent law school aims to achieve intellectual rigor while developing professional lawyers who will thrive in the 21st Century.

Background

The traditional model for legal learning was formed in the late 19th and early 20th centuries by Christopher Columbus Langdell through his professorship and deanship of the Harvard Law School.[1] Langdell essentially created the academic tradition of law school out of a system that had formerly focused on apprenticeships and practical training at practitioner operated schools.[2] Although many academic law schools were developing during Langdell's time, it was really Harvard where the model of understanding and teaching legal precedent developed. Langdell's model focused on the case method of instruction, which purported to teach the study of law through analysis of prior cases.[3] The idea of taking apart a judicial decision, analyzing the court's reasoning for the purpose of applying that process to another set of facts was, at the time, revolutionary.

In most American law schools little has changed in the teaching of substantive law courses since Langdell's day. Professors still rely on the case method of instruction and many faculty members continue to use a version of the Socratic method of instruction, an integral part of Langdell's teaching model.[4] In a typical substantive law course, such as evidence or torts, the student learns by reading edited cases in a casebook, attending a class taught through some combination of lecture and Socratic dialogue, and taking an end-of-term examination. In most classes, the entire grade for the course rests on that single examination.

Generally, the Socratic and case methods are considered hallmarks of "rigor" in legal learning, in part due to the hazing type culture such methods engender. In addition, the traditional model has spawned a culture of independent study, largely created by the traditionally low number of law faculty per law student. This culture of independent learning evolved in a time when law students themselves were very similarly situated individuals, predominantly male, white, privileged, and with similar educational backgrounds.

Fortunately, law school is no longer full of similarly privileged and similarly educated individuals. At any given law school, the student population has racial diversity, gender diversity, economic diversity, and educational diversity. The academic backgrounds of law students can be and are very different. Also, legal education no longer suffers from a resource crisis, with students paying high tuitions and endowments reaching a record level.[5] So, the question becomes whether legal education should consider revising its traditional practices to meet the needs of a very different time and a very different law student population.

Why Legal Education is Ready for Change

With America staring at continuing foreign wars, global warming, and an economic crisis of historic proportions, it is not "business as usual" for law schools. Instead, major tectonic shifts are being felt inside the walls of even the most traditional schools. These schools are starting to become conscious of the fact that, to maintain competitiveness in the world of law practice and to improve the efficiency of legal education school by school and course by course, law school tradition may need to be modified.

One key contributor to the need for educational change is globalization. The 21st century phenomenon of globalization results from the unprecedented mobility of goods, services, capital, and ideas around the world.[6] The economy is increasingly internationally interconnected,[7] and the modernization of law is inextricably tied to economic globalization.[8] Traditional limitations on the geographic scope of law firms are falling away,[9] and the reality of local practice is diminishing as even the local business clients engage in the global economy. The arena is expanding, and a law student's goal must be to build a skill set optimal to serving as a participant in the global market. It is important for law students to be able to conduct themselves well, to know their strengths and weaknesses, and to be aware of their representation in terms of what they bring to the table. All must be sought with global perspective and awareness, for the exclusion of the global context runs the risk of making the profession of law itself marginal or irrelevant.[10] The legal profession is increasingly challenged to serve as a global force providing structure and process for the complex world of the 21st century.[11] Legal education should evolve to prepare lawyers to advance with the information era's intercontinental movement and operate effectively in the modern arena which spans the globe.

Another key contributor to the need for change in legal education is the fact that students are not who they used to be. If legal education is to be effective, it must reach modern students, not simply students from a prior era. It is difficult to generalize, but the 21st century law student is probably more demographically diverse, yet possesses possibly a more homogeneous set of learning skills. The 21st century student learns in a world of electronic data, accustomed to electronic data collections and constant access to materials via the internet. This student rarely writes in longhand, often reads from the computer screen, and almost never uses textual materials in the course of research. This student creates an individual learning environment in her computer, which is not tied

to a physical study space such as the library carrel, but is portable, moveable, and often remotely accessible. When studying, the modern student segments her computer screen to view several different content items simultaneously. Rather than ponder a question for later study; this student is accustomed to the immediate gratification of Wikipedia, Westlaw, Lexis and other source sites that make information on endless topics available through very simple searches. This student can sit behind his screen and interact with people and materials otherwise not available. Thus, the computer itself creates a new learning environment for the modern student. This new environment is not only an individual environment but extends to the classroom when students bring computers into classrooms, particularly when those classrooms have wireless access to the internet.

The historically implemented mode of legal learning encourages law students to develop tunnel vision. Professionals have been pushed to become experts of their respective trades, and lawyers have been pushed to develop extreme expertise in very specific and discrete subject areas. Visually, this model of education-to-practice resembles an isosceles triangle as the wide foundation of education narrows to a single point. As the individual approaches that tapered area of proficiency, all interaction with and feedback from others becomes noise. As a result of the triangular model, creating a team of experts resembles a pie with many slices that represent the individuals who comprise the team. The team is highly competent and skilled in terms of levels of expertise brought to the table, but there is little interaction between members of the team where different perspectives on an issue would complement each other instead of independently existing side by side.

How Elon is Different

Elon Law School endeavors to be a law school with a difference, a difference that extends from its theoretical underpinnings to its practical import. Perhaps the first modification involves abandonment of the symbolic goal of traditional legal education, which was to teach law students to "think like a lawyer."[12] Not only does this phrase relate to a time when the professional lacked racial, cultural, and economic diversity, it also fails to speak to students, or faculty, about the process of legal learning. The goal in modernizing legal education at Elon, therefore, is to maximize effective learning through an adaptation of traditional methods to the modern realities of students and the profession.

The desired visual model at Elon of how a law school should move students from education-to-practice is not the triangle described above, but rather an hourglass. The broad foundation of knowledge tapers to high competency then gradually reopens such that the individual is receptive to interaction, feedback, and change from application of skills and integration of new approaches. The modern model would respond to the increasing importance and application of networking and interaction with others, and a team can be composed of highly competent people who are open to feedback and new approaches.

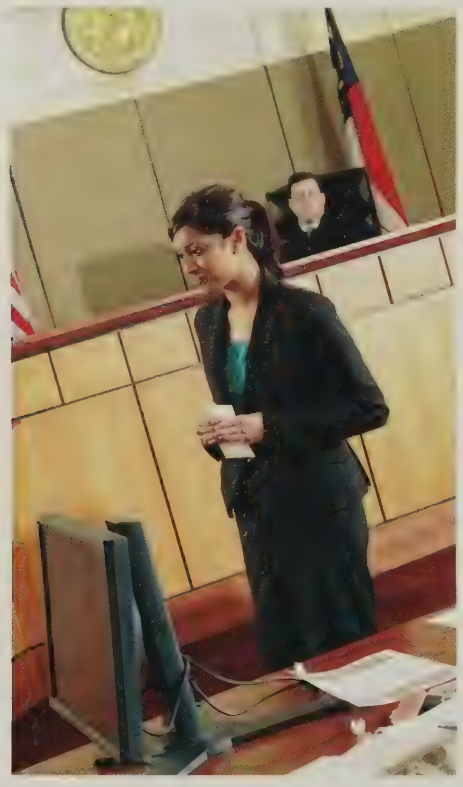
A. Offering a Learning-Centered Education

At Elon, the goal is to maximize effective

learning, which is different than maximizing good teaching. Elon recognizes that teaching and learning are not an identity. Just because someone is teaching does not mean someone is likewise learning.

A learning-centered education can have many meanings. It is not student-centered. It is not about giving students what they want (or feel entitled to), but rather about what they need. The goal is not to pander educational goals to modern gadgetry and gimmickry. Rather, updating the portrait of the typical law student allows the institutions and faculty to refine the role of teaching and learning in the modern law school and create learning environments both within and without the actual law school, which better equip law students for continued learning and professional practice in the 21st century.

For example, if we know that the student yields or splits his or her screen to share non-course and course content, we should endeavor to fill all the windows. When teaching the substance of a case, we can engage students in their world by calling on students to access related cases on Westlaw and Lexis, review a history or pop culture reference on Wikipedia, or seek out some detail related to the case or the notes on the internet. Also, with simple projection technology and classroom internet access, faculty can demonstrate the relationship between content by projecting their own working outline on a split screen that also includes the case itself and other content related to the course, such as an analytical map. Learning-centered education is active. It does not just tell students about information, but promotes learning by demonstrating law study and by coaching, rather than mandating, student involvement.



B. Preparing for a Global Practice

Those who engage in legal education should adapt domestic structures to be able to keep pace with the movement of globalization in best serving students,[13] for different skills are now significant in interacting productively and successfully. Born to interact remotely through technology, the average law student is a "digital native," aware from birth of the limitless resource that is the internet and intrinsically attuned to the instantaneous nature of communication that is possible, often via devices that fit in a pant pocket or a child's palm.[14] "Digital native" students are beyond the stage of infatuation with access to sources distributed globally. This broad scope of access is taken for granted, as globalization is not an external concept but what the student lives and breathes. To educate the student as if he or she was a "digital immigrant," adapting to new technology, fails to take advantage of the natural intersection between the student and the environment of the 21st century marketplace. It is hence vital that the study of law is presented in the vernacular and modes of the students.

The 21st century world is characterized by extensive relations, and legal education serves as a catalyst for personal growth and understanding of self in becoming a lawyer. As law firms expand, a lawyer may be in contact with people around the world and travel to offices, conferences, and meetings anywhere from Los Angeles to Geneva to Tokyo. "Corporate homelessness" is coming into play such that large firms are pushing a trend of disassociation from a headquarters city in implementing national and global structures, with which it is possible to be an established institution in each city where business is conducted.[15] Law students must examine and understand their limits to avoid being isolated or overextended in the world of virtual practice. Finding that balance is a personal issue to a degree, but is also important that legal education actively incorporates an understanding of the demands of 21st century global practice into the law school curriculum. Combining substantive education directly with practical education allows students to explore their role in practice from the first day of their professional education.

C. Cultivating a Professional Identity

The recent Carnegie report on legal education, "Educating Lawyers," criticized the traditional model of legal education for its narrow cognitive-based approach to education, where students remained as students (and not lawyers) during most of their law school career.[16] The report urged law schools to integrate the cognitive with the practical; to take law students and make them practice as lawyers earlier in their education and in a broader way than was done before.

At Elon, we have brought lawyers into the school as preceptors, reviving an ancient practice where the preceptors mentor, give feedback to and guide students throughout their first year of law school. In addition, there is a proposal to adopt week-long practicums for first year students in their first and second semesters of law school, which would allow all students to do some work as quasi-lawyers (under the guidance and supervision of experienced, highly capable attorneys) and to then write a significant paper solving a legal problem related to one of their first year courses. This program is an attempt to apply the Carnegie Report's suggestion about integrating legal theory and practice in a committed and substantial fashion.

Also, Elon is developing and implementing a curriculum that interconnects law study with the study of leadership. Students examine leadership in all three years of the curriculum, first focusing on their attributes as a potential leader, second exploring the role of a leader in connecting to others, and finally experiencing leadership itself through a capstone project. The curricular design follows the template developed at the Center for Creative Leadership and is being shepherded at Elon by Dean Emeritus Leary Davis and Professor John Alexander, former Executive Director of the Center for Creative Leadership. In the leadership program, students work on legal problem solving by forming teams to research and advise selected community non-profits on legal

issues facing the organizations. The work is completed under the supervision of licensed attorneys and is presented to the client at the close of the course. The capstone project, the culmination of the leadership course, is an extensive and detailed self-study, similar to a graduate thesis, wherein the student explores a community or legal issue from the vantage point of leadership study. The full leadership course is designed to prepare students for modern practice, preparing students to think of the law in a global and community context, rather than solely in the academic context.

Conclusion

A new educational venture provides opportunities not otherwise available in an established setting. Seizing upon those opportunities, Elon University has designed its law school to be different than the traditional law school. The Elon Law School is endeavoring to meet the challenges of 21st century law practice, incorporating, not deemphasizing, the unique perspective of the 21st century student. The Law School is using an innovative curriculum that explores law and leadership through the successful medium of engaged learning to develop lawyers who possess extraordinary substantive legal knowledge alongside the self-awareness requisite to success in the modern, global practice. ■

Catherine Ross Dunham is an associate professor of law at the Elon University School of Law. Professor Dunham is a licensed North Carolina attorney and a graduate of the University of North Carolina and Campbell University School of Law. She received her LLM from the University of Virginia. At Elon, Professor Dunham teaches civil procedure and directs the Trial Practice Program.

Steve Friedland is a professor of law and senior scholar at Elon University School of Law and has written several books and articles about legal education. He received his JD from Harvard Law School and L.LM and JSD degrees from Columbia University School of Law.

George Johnson is interim dean and professor of law at the Elon University School of Law. Dean Johnson is a graduate of Amherst College and the Columbia University School of Law. He is formerly the president of LeMoyne-Owen College in Tennessee and served on the law faculties of Howard University and the George Mason University School of Law. At Elon, Dean Johnson teaches contracts and constitutional law.

Endnotes

1. Robert Bocking Stevens, *Law School:Legal Education in America from the 1850s to the 1980s* (G. Edward White ed., University of North Carolina Press 2001) (1983).
2. *Id.* at 20-28.
3. *Id.* at 53 ("The Langdell approach not only limited itself strictly to legal rules but also involved the assumption that principles were best discovered in appellate court opinion." This assumption underlay what became known as "the case method.")
4. *Id.* at 53. ("Teaching at Harvard Law School under Langdell's influence consisted of the professor and a large number of students analyzing appellate decisions, primarily in terms of doctrinal logic. This enterprise became entangled with the question-and-answer technique … a merger that rather pretentiously came to be known as the Socratic method.").
5. *See* American Bar Association statistics on public and private law school tuitions; www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf. In 2005, the average tuition for a non-resident student at an ABA approved public law school was $22,507.00 and the average tuition at an ABA approved public law school was $30,250.00. For information on law school endowments, see *Top 20 Law Schools by Size of Endowment,* dated September 20, 2006, "Brian Leiter's Law School Reports," http://leiterlawschool.typepad.com/leiter/2006/09/top_20_law_scho.html.
6. Global Policy Forum, *Defining Globalization* www.globalpolicy.org/globaliz/define/index.htm (last visited Oct. 6, 2008); *see also* Global Policy Forum, *Globalization of the Economy,* www.globalpolicy.org/globaliz/econ/index.htm (last visited Oct. 6, 2008).
7. *See Globalization of the Economy,* Global Policy Forum
8. Terence C. Halliday & Pavel Osinsky, *Globalization of Law,* 32 Ann. Rev. of Soc., 447, (2006).
9. Doron F. Ezickson, *Law Firms, Clients Should Gain from Globalization,* Boston Globe, Nov. 3, 2002 available at www.globalpolicy.org/globaliz/law/intllaw/1103bostonlaw.htm
10. Winston P. Nagan, *The Global Challenge To Legal Education: Training Lawyers For A New Paradigm Of Economic, Political And Legal-Cultural Expectations In The 21st Century* at 11 (July 23-24, 2004) available at www.nsulaw.nova.edu/international/caribbean/documents/caribbean%20speech.doc
11. *Id.*
12. The singular focus of law study on thinking like a lawyer, epitomized in films such as "The Paper Chase" (Thompson Films 1973), implied that the sheer quantity of time required to learn to think like a lawyer related to its quality. In contrast, the popular culture also intimated that each person had a limit and that some or many students were not minimally qualified to become a lawyer no matter how hard they tried.
13. Parikshit Dasgupta, *Globalization of Law and Practices* (Mar. 6, 2003) available at www.legalserviceindia.com/
14. *See* Marc Prensky, *Listen to the Natives,* Educ. Leadership, Vol. 63, No. 4 (Dec. 2005/Jan. 2006) ("I've coined the term digital native to refer to today's students (2001). They are native speakers of technology, fluent in the digital language of computers, video games, and the Internet. I refer to those of us who were not born into the digital world as digital immigrants. We have adopted many aspects of the technology, but just like those who learn another language later in life, we retain an "accent" because we still have one foot in the past. We will read a manual, for example, to understand a program before we think to let the program teach itself. Our accent from the predigital world often makes it difficult for us to effectively communicate with our students.").
15. Kevin Livingston, *For Firms, There's No Place That's Home,* The Recorder/Cal Law, Aug. 2, 1999.
16. *See e.g.*, William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Schulman, *Carnegie Foundation Report: Educating Lawyers: Preparation for the Profession of Law,* (John Wiley and Sons, 2007). *See also* Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map,* Clinical Legal Education, 2007.

An Interview with Our New President—John B. McMillan

Q: What can you tell me about your roots?

I am the oldest of four children born to wonderful, loving parents. My dad was a family physician who practiced in Moore County for 40 years. In addition to a full day of seeing patients in the office, he visited patients in two hospitals and made ten or more house calls every day. My mom was a homemaker. Both of them were loved and respected in the community.

Q: When and how did you decide to become a lawyer?

Although there was no pressure to follow my dad and granddad into medicine, I did not rule out doing that until my sophomore year at Chapel Hill. Once that decision was made, my objective became obtaining a law degree. I admired several local attorneys who were community leaders, and I had a growing interest in government. I ran for and was elected to the student legislature, enrolled in extra political science courses, and consulted lawyers about the advantages of various law schools. By my senior year, Angie and I were engaged, and I had been accepted at the UNC Law School.

Q: What is your practice like now and how did it evolve?

Good fortune found me when I received an opportunity to clerk with Manning, Fulton & Skinner the summer after my second year in law school and then received an offer of employment from that firm. My early years were spent doing general practice which included, among other things, searching titles, preparing wills, civil litigation, and criminal defense work. I was on the indigent defense list and was appointed to defend clients in a wide range of cases. When I had been out of law school a little more than a year, I defended a woman against a first degree murder charge and will never forget that experience. Although that trial ended with a very favorable result, I determined then that I was not cut out for criminal defense work and would concentrate on other areas. I began doing more and more civil litigation of all types. Over the past 10-15 years, my litigation practice has been largely in the area of representing property owners in condemnation cases. About 1973, I began representing clients in the General Assembly and my governmental relations practice now includes representing a large number of major corporations and national and state trade organizations.

Q: If you had not chosen to become a lawyer, what do you think you would have done for a living?

Knowing what I know now, I would have tried to find a way to become a safari guide in Kenya. I could also see myself working for an environmental nonprofit like The Nature Conservancy.

Q: How and why did you become involved in State Bar work?

My first involvement was being appointed by the State Bar Council to serve on the Disciplinary Hearing Commission. That was in 1981, and I served on the DHC for nine years, the last four as chairman. Although the DHC is an independent commission, as chairman I had a lot of contact with State Bar officials and staff. State Bar attorneys represented the Bar before the hearing panels, and I reported to the council on the activities of the DHC. In 1985, I was president of the 10th Judicial District Bar and the Wake County Bar Association and in those capacities also had contact with State Bar officials. As to why I became involved, it was probably more than anything simply a desire to give something back to the profession that has meant so much to me.

Q: How would you describe your experience on the Disciplinary Hearing Commission?

I learned a great deal from the chairs who preceded me. Dudley Humphrey was chair when I was appointed to the commission, and Judge Naomi Morris succeeded Dudley. I was Judge Morris's vice-chair and then filled in for her when she became ill. We had extremely conscientious members on the commission; they worked hard to find the truth and dispense appropriate discipline. In some cases the decisions were obvious, but in many cases we struggled to make sure we got it right.

Q: What was your experience on the Bar Council like and how did it differ from what you anticipated?

My senior partner Howard Manning had served on the council for the nine years preceding my election and had given me a pretty good idea of what to expect. Once on the council, I was immediately impressed with the diligence with which all of the members dealt with the responsibilities assigned them. Every councilor read the materials and was prepared for the meetings. Councilors come from all over the state and from all varieties of practices.

They bring different perspectives to the meetings, and everyone contributes.

Q: Can you tell us about the most difficult issue you faced while serving on the council?

During my time as chair of the Grievance Committee, our counsel advised me that a superior court judge had set aside the conviction of a death row inmate because the prosecutors withheld evidence from the defense attorney. We had not received a grievance from anyone, but our counsel and I immediately agreed that a grievance file should be opened and the matter investigated. That was done, and the case was referred to the Grievance Committee which found probable cause and referred the case to the DHC. A complaint was filed in the DHC, discovery was conducted, and the defendants were found by the DHC panel to have violated three of the Rules of Professional Conduct. There was no finding that any evidence was deliberately withheld. In fact, the post-conviction attorney who successfully had the conviction overturned voluntarily wrote in a letter that he did not believe that the conduct of the prosecutors had been intentional. The hearing panel determined that the appropriate discipline was a reprimand. There followed a lot of criticism in the media about the case and the decision reached by the hearing panel. I have publicly defended the process and, because the misconduct was unintentional, do not find fault with the decision.

Q: You've been an officer during the past two years, first as vice-president and then as president-elect. What has that been like?

It has been a great learning experience for me. The officers spend a lot of time together, trying to make sure that the various components of the State Bar work smoothly. North Carolina State Bar presidents have a long gestation period, but that provides the continuity that is needed in an organization like ours. It has been extremely helpful to have had the opportunity to learn from Calvin Murphy, Steve Michael, and Hank Hankins. Not only have we spent a lot of time together in Raleigh, but we have traveled the state from Kitty Hawk to Asheville attending district bar meetings and from Miami to San Francisco to Boston attending ABA meetings.

Q: You live in a large city and practice in a fairly large firm. Do you think you can understand and empathize with those lawyers who live and work in rural areas of the state?

With his wife, Angie, looking on, John B. McMillan is sworn in as president of the North Carolina State Bar by Chief Justice Sarah Parker.

My formative years in the practice were with a firm of five partners and me, not a large firm by today's standards. I grew up in a town of 5,000 people, and I believe the largest law firm in Southern Pines in those days was two lawyers. When I started practicing, I would routinely go to court in Apex, Wendell, and the other small towns in Wake County, and I have had cases with lawyers from all over North Carolina and in courts all over the state. Members of the council from small towns in North Carolina are not bashful and are more than willing to share their perspectives on issues that come before us. My experience is that everyone's viewpoint is heard and respected as it should be. We have had terrific leaders in the State Bar from small towns as well as from Charlotte and the other large cities in the state.

Q: In your opinion, does it make sense for lawyers to be regulating themselves? Is it good public policy? Do we deserve the public trust?

I have no doubt that the citizens of North Carolina are best served by our lawyers being self-regulating. We have been doing that effectively for 75 years. It was good public policy when the General Assembly passed the legislation establishing the State Bar, and it is good public policy now. Starting with the admission process and our Board of Law Examiners through the disciplinary system with the Grievance Committee and the DHC, lawyer volunteers are vigilant to ensure that the public is protected. In between licensing and discipline, the State Bar has in place a wide range of programs designed to assist lawyers in maintaining high standards and to help the public when issues arise with a lawyer's services. We continue to earn the public's trust every day.

Q: You served on the State Bar's Grievance Committee for many years and ultimately were its chairman. What do you think about the disciplinary system? Is it working? Are we doing a good job? Where can we improve?

The objective of any bar disciplinary system should be to provide an avenue for people with complaints about the conduct or services of lawyers to have those complaints investigated and addressed. That process should be deliberate, expeditious, and fair; it should be fair to the complainant and to the lawyer. The system should be transparent, but the individual investigations should be confidential until such time as it is determined that there is probable cause to believe that the lawyer's conduct violated the Rules of Professional Conduct and public discipline is warranted. Trials should be public, and the decision makers should be impartial, knowledgeable about the Rules, and fair. We have just completed a year-long study of our disciplinary system and concluded that it is working. We made some refinements, primarily dealing with tightening the time intervals in various stages of the process and made other minor modifications designed to

achieve more consistency in the discipline imposed for similar misconduct. All in all, I believe our system works well.

Q: Recently the State Bar has sought to increase access to justice by petitioning the Supreme Court for mandatory IOLTA and by seeking legislation to permit "retired" lawyers to provide *pro bono* legal services. Both programs have now been implemented. Do you think these initiatives will improve the situation? Should the profession be doing more to make the legal system more accessible?

Like most things, the cost of legal services continues to rise, and the number of people who cannot afford the services of a private attorney continues to grow. We seek to address the legal needs of poor people in a number of ways. Persons charged with crimes who cannot afford a lawyer are entitled to representation paid for by the state. Others have to depend on too few Legal Aid attorneys or lawyers providing services for free or at a reduced cost. IOLTA is a primary funder of North Carolina's Legal Aid attorneys, and requiring all lawyer trust accounts to be IOLTA accounts will generate additional funds for those programs. Allowing retired lawyers and lawyers living in North Carolina but licensed in other states to work with Legal Aid attorneys to provide *pro bono* services will also help. But there are still a lot of unmet needs, and there are other ways that we can do more. There are now 24 states that require lawyers to maintain their trust accounts with banks that pay interest rates on those accounts that are comparable to those paid to the banks' best customers. This is a relatively new concept, and 16 of those 24 states have adopted "comparability" over the past two years. In most instances the results of comparability have been significant. The IOLTA board is currently studying this concept, and I have asked our Issues Committee to do the same.

Q: Can you tell us where we are in regard to planning for the State Bar's new headquarters? Do we know where it is going to be located? Do we know when it will be built, how much it will cost, and how it will be paid for?

Our survey of the members of the council and staff reflected a clear preference for a downtown location for the State Bar headquarters. Through the work of our Facilities Committee and with the help of a consultant, we identified a location in the State Government Complex at the southwest corner of the block just south of the Governor's Mansion, at the intersection of Blount and Edenton Streets. Governor Easley has agreed to recommend that the Council of State agree to lease this property to the State Bar for a period of 99 years for a nominal sum and by the time you are reading this, I hope that has been approved. Acquiring this property on this basis will likely save the lawyers of North Carolina something approaching a million dollars. We will need to be able to occupy our new building by January 1, 2012. Over the coming year the Facilities Committee will be continuing its work in the areas of cost and financing. We have considerable equity in our current building and we believe that equity will provide a significant down payment for the new facility.

Q: What else would you like to accomplish during your year as president?

The most important thing for the State Bar is to continue to perform our core functions efficiently, expeditiously, and fairly. These core functions include the disciplinary process and the work of the Ethics, Authorized Practice, and Attorney-Client Assistance Committees. As I said previously, we have just completed a comprehensive review of the disciplinary process, and I want us to undertake a similar review of the other programs to make sure they are performing well. I believe they are, but now is a good time for us to take another look. I have already mentioned the study of the issue of comparability in the IOLTA program, but, in a similar vein, I have asked the Issues Committee to consider the implementation of some version of Model Rule 6.1 from the ABA's Model Rules of Professional Conduct dealing with a lawyer's obligation to provide *pro bono* legal services. Over 40 states have adopted variations of this rule, and we should take another look at it. As discussed in the previous question, I am hopeful that by the end of the year we are pretty well along with regard to the plans for the new headquarters. And, finally, I am looking forward to the implementation of the State Bar's new lawyer recognition program to appropriately highlight the contributions of lawyers from all over the state who are rendering extraordinary service to their communities.

Q: Tell us a little bit about your family.

My life-partner Angie and I have been married for 44 years. My father died a few years ago when he was 86 and my mother died three years later, three days before her 90th birthday. They were both incredible individuals and were immensely important in my life. I am the oldest of four children. My sister Julia is a pediatrician, director of the Johns Hopkins University School of Medicine pediatric residency program in Baltimore, vice-chair of the Department of Pediatrics at Hopkins, and is past chair of the American Board of Pediatrics. She is married and has three children. The oldest, Edith, is in her second year of medical school at Johns Hopkins. My father graduated from the Johns Hopkins School of Medicine and was thrilled when Julia ended up there. My sister Mary lives in Toronto and is retired from a career devoted to helping families with autistic children. My brother Robert lives in Raleigh, is a manager at a well-known local watering hole named The Players Retreat, and plays the bass guitar in three bands. Angie has a brother, Broughton Stokes, who lives in Winter Park, Florida. He has three children who live in Portland, Oregon.

Q: What do you enjoy doing when you're not practicing law or working for the State Bar?

I have spent a lot of time working with the North Carolina Museum of Natural Sciences, The Nature Conservancy, and the UNC School of Law. Those organizations are very important to me. I enjoy the outdoors and cutting my own firewood. I am an enthusiastic amateur photographer and would rather be camping in the game parks of Kenya or Tanzania than anywhere else on earth. Fortunately, Angie and I share that love and we have been privileged to do that many times. We have also enjoyed taking many friends with us for those experiences.

Q: How would you like for your administration to be remembered when the history of the State Bar is finally written?

The goal for all of us should be to seek to elevate our profession. It is unlikely to be done in the manner of a rising tide that lifts all boats. It is more like putting a jack under one corner, cranking that corner up, blocking it off so it doesn't fall back, and then moving the jack to another corner. I hope that during the coming year we will be able to ratchet up some aspects of the profession a few notches, making sure that we don't fall back anywhere. To use another analogy, I want to leave the woodpile a little higher. ■

Jesse Green

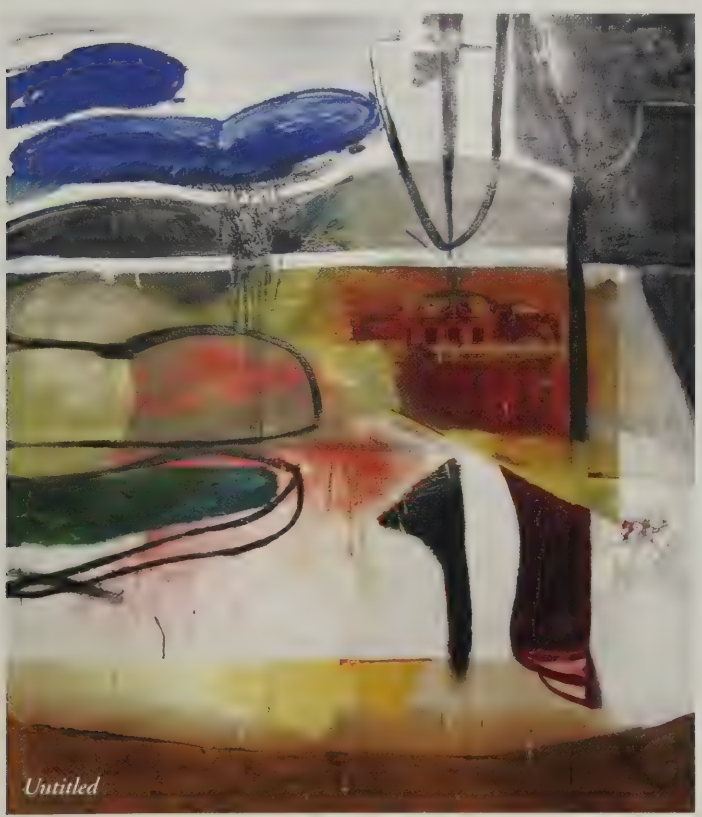
Once I was told that a painting tells a story. Now I believe that a painting reveals a story. The act of painting is an exploration and the result is a revelation. Every time I find satisfaction in a painting, it is because I have found something that I didn't know was there, something new and surprising. The moment in a painting when a single action brings it all together is the best part of painting.

Jesse Green's paintings reflect his diverse background and training in painting, sculpture, carpentry, metal work, and architecture. He received a Bachelor of Fine Arts from the University of North Carolina at Chapel Hill (1998) where he studied sculpture with Jerry Noe and painting with Marvin Saltzman. While an undergraduate, he attended the School of Lorenzo de'Medici in Florence, Italy (1997) to study oil painting, life drawing, and architecture. Green completed his formal education with a Masters of Architecture degree from North Carolina State University (2005). He is currently studying for the LEED accreditation exam.

Green has experience as a mural painter, a steel fabricator, and a carpenter. He interned as a muralist with Michael Brown in Chapel Hill (1998) and as a metalsmith and steel fabricator with Rick Avrett, Charleston, South Carolina. While in Charleston, he found employment as a metal fabricator of furniture and architectural details. More recently, he has worked as a metal fabricator and carpenter for Phil Szostack Associates in Chapel Hill and as an intern at BuildSense Incorporated in Durham.

Green is currently employed as an architectural designer for Cherry Huffman Architects in Raleigh where he is a member of teams for design projects for the Wake County Public School System, Brody Auditorium at East Carolina University, and Burning Coal Theatre. ■

Each quarter, the works of a different contemporary North Carolina artist are displayed in the storefront windows of State Bar building. The artworks enhance the exterior of our building and provide visual interest to pedestrians passing by on Fayetteville Street. The State Bar is grateful to The Collectors Gallery, the artists' representative, for arranging this loan program. The Collectors Gallery is a full service gallery that represents national, regional, and North Carolina artists, and provides residential and commercial consulting. Readers who want to know more about an artist may contact Rory Parnell or Megg Rader at TCG, 323 Blake Street, Raleigh, NC 27601 (919.828.6500).



Opinions

By L. Thomas Lunsford II

Question: When is it permissible to plagiarize a brief? Answer: Anytime, until January 22, 2009. Then, all bets are off. Why? Because that's when the Ethics Committee convenes to reconsider proposed 2008 FEO 14, the ethics opinion that undertakes to answer that question. Until that time, the matter is a settled, gray-letter principle of professional responsibility, subject to change but presumptively correct. Like many opinions, it at once establishes a minimum standard of conduct and an aspirational standard of professionalism. Unlike most opinions, those standards are contrary to one another. If you carefully read the proposed opinion, which is published for comment in this issue of the *Journal*, you will see that while it's thought to be permissible to rip off someone else's argument, doing so without attribution is really not in keeping with the highest standards of the profession. In other words, you can't be disbarred for doing it, but you can't be too proud of it either.

My purpose in writing isn't really to criticize the proposed opinion, although my use of loaded terms like "plagiarize" and "rip off" might tend to suggest a negative point of view. I'm really more interested in the process whereby its fate will be determined. Next January the Ethics Committee is likely to affirm the opinion and recommend that the State Bar Council adopt it as an official interpretation of the Rules of Professional Conduct—but it may not. A lot depends on you, the conscientious readers of this column and, it is hoped, that portion of the *Journal* that contains the most recently proposed formal ethics opinions, or FEOs. As it happens, there is really nothing quite so uncertain as the substance of a proposed ethics opinion (unless it's a revised proposed ethics opinion). This is because the Ethics Committee is traditionally more concerned with "getting it right," than about "getting it soon," or "getting it final." To ensure correctness, comment from the membership concerning proposed ethics opinions is earnestly solicited and painstakingly considered, quarter after quarter. This leads quite often to compromises and to corporate changes of mind—and can necessitate the successive publication of several iterations of an opinion for comment. Ultimately, after all dissenters are satisfied or exhausted, an opinion is adopted by the committee and submitted to the council for approval as an FEO. Once approved, it is "formal" and final, at least until someone asks that it be reconsidered.

Anyone who is paying attention knows that the State Bar has a very comprehensive regulatory program. The listing of our activities is extensive and varied. Nevertheless, our primary responsibility is and always has been the establishment and enforcement of high standards of professional conduct. Perhaps not surprisingly, more attention is generally paid to the enforcement effort than to the process whereby the rules are developed and interpreted. Disciplinary cases, which are public once probable cause has been determined, are always personal and often pungent. They make good copy, confirming the prejudices of newspaper readers and satisfying the curiosity of subscribers to the State Bar's own publication. Indeed, my informal research suggests that most lawyers who pick up the *Journal* turn first to the disciplinary pages. It is only after they determine that no one they know has been "stung" that they allow themselves the pleasure of my editorial company.

Despite the fact that professional responsibility appears to be more interesting in reference to its breach than its formulation, it is a wonderful subject to contemplate in the abstract. It can also fascinate when considered, as is most often the case, in regard to the hypothetical. This, of course, is the province of the Ethics Committee. It is also the realm of the committee's staff. Each year over 5,000 opinions on questions of professional ethics are issued under the auspices of the Ethics Committee. All but a handful are dispensed directly by the members of the staff under the direction of Alice Mine, who serves as counsel to the Ethics Committee in addition to her many other responsibilities. Virtually all of the staff's advice is responsive to relatively urgent inquiries by telephone or email from lawyers who are unsure about what they ought to do. If our ethics lawyers determine that the callers are asking about their own prospective conduct in regard to facts that don't appear to be in controversy or the subject of a pending motion, and if they think they know the answer, they will opine unofficially. Otherwise, they will decline to opine.

Allow me to elaborate upon the kinds of inquiries that don't get answered. Those who question past conduct are referred to the Grievance Committee to insure that the State Bar will speak with one definitive voice concerning possible ethical misconduct. Those who seek advice relating to matters in litigation, such as motions to disqualify, are inevitably invited to "tell it to the judge." The State Bar will not presume to determine a matter with respect to which a court has already assumed jurisdiction, although we will occasionally advise a judge about a pending matter if he or she initiates the discussion. Those who discern ethical issues in regard to disputed material facts outside the context of litigation also cannot be accommodated. Instead, they are advised to seek consensus and to call again only after all concerned can agree on a common factual predicate. The Ethics Committee, for all of its oracular wisdom with respect to situations that are well defined, is in fact ill-equipped to find facts. Finally, those who want to discuss the ethics of a fellow attorney are

invited to "go hence without day," and are referred to the latest edition of the *Lawyer's Handbook*. We will not critique, or even consider, the conduct of a stranger to our conversation, lest our under-informed *ex parte* musings be mistaken later for authority or decision.

It should be noted that persons asking novel questions do usually get answers, just not from the staff. They are invited to submit written inquiries to the committee. This allows matters of first impression, which often tend to embody policy concerns, to be deliberately considered and resolved by the committee in the fullness of time. It also prevents the staff from guessing wrong.

The ethics lawyers on our staff[1] are the leading authorities on the *well-settled* law of professional responsibility in our state. Because of their expertise, most callers do get good and useful responses to guide their behavior. They also get a moderately "safe harbor." If they follow the advice given by the staff and their conduct later becomes the subject of a grievance, their implied desire to do the right thing and their actual compliance are generally enough to establish good faith and the absence of disciplinary culpability. It must be noted, however, that the Grievance Committee, though honor bound, is not bound to honor informal staff opinions. Such advice is not official State Bar policy and does not absolutely immunize compliant conduct, though perhaps it should. Happily enough, history discloses no instance where a lawyer, having obtained an informal opinion, has been disciplined for following the advice given. This is some confirmation of my long held belief that our staff lawyers, though not always right, are never wrong.

I should note that there does exist a procedure whereby a thoroughly safe harbor can be accessed. The staff can provide authoritative written advice by means of an "ethics advisory" letter. Ethics advisories are binding upon the Grievance Committee from the date of issuance until review by the Ethics Committee at its next quarterly meeting. No action taken in reliance upon such an opinion while it is in force is sanctionable. However, an ethics advisory can be withdrawn or modified by the Ethics Committee, and then all previously placed bets are off. This species of opinion once roamed freely across the committee's agenda each quarter, but is now virtually extinct. Over the last ten years the volume of inquiries has become so great that the staff simply hasn't had the time to write such opinions and to generate the ancillary correspondence. For that reason primarily, ethics advisories are no longer advertised or otherwise encouraged, and relatively few lawyers appear to know of their theoretical availability. Frankly, I hesitate to mention them myself. We now have a carefully balanced ethosystem in place, and the abrupt reintroduction of the species might trigger an ethological disaster. Even so, I don't believe that I can ethically keep this information to myself.

Although the vast majority of ethics opinions are issued by the staff, the most interesting and novel questions are reserved for determination by the Ethics Committee itself. The committee meets on a quarterly basis. In contrast to the Grievance Committee, which conducts its retrospective analysis of suspect behavior in secret, the Ethics Committee's meetings are public affairs. A typical agenda would include 30 to 40 issues, and take three to four hours to sort through. The Ethics Committee is, in my opinion, our profession's last great debating society. Its procedures are simple and reasonably well known. Inquiries that seem appropriate for determination by the committee are identified during the quarter and proposed opinions are then drafted by the staff for the committee's consideration. These drafts are discussed and often amended at the quarterly meeting. Once a majority of the committee's members is satisfied, the draft is approved as a proposed opinion. If it is deemed to be of general interest or seems to have value as precedent, it is published for comment in the *Journal* as a "proposed formal ethics opinion." If it appears to be of limited interest, perhaps because of its very peculiar factual underpinnings, it is merely circulated among the members of the Bar Council as a "proposed ethics decision." At the following quarterly meeting, comment is reviewed by the committee and a decision is made as to whether the opinion should be recommended to the council for adoption. As noted above, this last step is often forestalled as comment is received, modifications are made, revised proposed opinions are published, more comment is received, climate change is experienced, and people grow old and die. Seriously, it can take awhile. One relatively controversial matter recently appeared on the committee's agenda at seven consecutive quarterly meetings before its final resolution in two distinct formal ethics opinions.[2]

Why is consensus so elusive? Well, it's important to remember than we're not talking about immutable principles here. Although our profession's "core values" have remained the same since the founding of the State Bar 75 years ago, the particulars of our rules of professional responsibility have been altered considerably. Many things that were once forbidden are now tolerated. Advertising is the best example, but there are certainly others. Professional responsibility, like the law in general, has had to change to accommodate a metamorphic society and an evolving constitution. It should not be surprising then that within this evolutionary, and sometimes revolutionary, framework, the Ethics Committee occasionally has difficulty hitting its moving targets. It is also worth noting that the committee, though charged with the scientific ascertainment of correct answers, is almost as political as it is analytical. It operates in the laboratory of human relations, enriched in its undertaking by the diverse personal and professional experience of its 28 members, many of whom are appointed for the very reason that they seem to represent some particular constituency or point of view. Quite intentionally, the committee has been invested with an ark full of specialized expertise, including a fair number of somewhat oppositional pairings. Categorically speaking, there are criminal lawyers and prosecutors, insurance defense lawyers and plaintiffs lawyers, and real estate lawyers and non-real estate lawyers, just to mention a few of the most distinct varieties. There is also a federal district court judge and a slew of law professors. It's an impressive group of accomplished people, all of whom are committed to doing the right thing. But, the harmony's such that they don't always appear to be singing out of the same hymnal.

Exactly what do you have when you have an ethics opinion? Advice, basically. Sound advice, generally. Authoritative advice, certainly. Reliable advice, provisionally. But nothing more than advice. Ethics opinions do not have the force of law. They are interpretations or applications of rules that do have the force of law, but are not themselves the "Rules of Professional Conduct." Unlike the underlying Rules of Professional Conduct, ethics opinions are not approved by the Supreme Court. They are not published in the *Appellate Reports* or the *North Carolina Administrative Code*. They are not binding on anyone except, perhaps, the officers and employees of the Bar Council. The Disciplinary Hearing Commission can heed

CONTINUED ON PAGE 39

A Profile in Specialization—E. K. Morley

An Interview by Denise Mullen, Assistant Director of Legal Specialization

I recently had an opportunity to talk with E. K. Morley, a board certified specialist in Hendersonville. Morley earned his undergraduate degree at Pennsylvania State University and began his legal education at the University of Geneva in Switzerland, completing his law degree at Wake Forest University School of Law in 1982. He settled in Hendersonville, working primarily in tax law. He became a board certified specialist in estate planning and probate law in 1995 and now practices at the Law Offices of E. K. Morley, PLLC, with his wife Ruth, a board certified paralegal.

E. K. in his office in Hendersonville.

In his spare time, E. K. enjoys traveling with his wife and the photos featured here are from his recent 300K bike tour through northern and eastern parts of France, including Auxerre, Saulieu, and Beaune in Burgundy. He and Ruth look for travel opportunities that involve challenges and have taken similar bike tours in Canada as well as cross country ski tours. E. K. seeks challenges beyond travel as well, having attained his general contractor's license to build a Swiss chalet in the mountains that he and Ruth enjoy in their down time. At age 77, E. K. maintains a full work schedule, and is committed to staying active in both his free time and his law practice. Here are his comments about the specialization program and the impact it's had on his career.

Q: Why did you pursue certification?

I was 51 when I graduated from law school in 1981, and I had enjoyed a successful career with Caterpillar overseas. I knew that I didn't want to work for anyone else and that I didn't have time to try and learn every area of the law. I wanted to specialize and initially I started working in tax law. That led to work in estate planning and probate law. Earning the board certification helped me to further narrow my work so that now I primarily handle estate, probate, and trust litigation. I enjoy enforcing and modifying documents. At this point in my career, with the experience I've had, I can relatively quickly analyze an estate plan or trust, determine any issues or problems that exist, and what remedies are available.

Q: How did you prepare for the examination?

I took, and have continued to take, many estate planning continuing legal education (CLE) courses, including the Heckerling Institute, the Duke University annual estate planning course, and the NC Bar Association annual meeting for the estate planning section. My experience in tax law was really helpful as well.

Q: Has certification been helpful to your practice?

Yes, it has clearly been helpful to my practice. I take personal pride in my board certification and enjoy mentioning it to others. On my recent bike tour in France, as we all made our introductions, I made sure to include my North Carolina State Bar board certification, and this was a group with no other lawyers present. I include the certification wording on my letterhead and believe that it gives me an edge in many situations. It has also justified my charging higher hourly rates over the years.

Q: How does your certification benefit your clients?

My clients receive legal assistance that's based on current state and case law authorities, and they receive a suggested plan of action with prices included. This is drawn from experience and is a direct result of my specialization. I am able to provide much more and better oriented advice. I see myself as offering boutique legal services, a small firm providing personal attention. Yes, it will cost a bit more, but the client will receive something that will last and of which they can be proud. In many

cases, clients do a disservice to themselves in the long run by going to someone who is marginally qualified.

Q: Are there any hot topics in your specialty area right now?

The Chapter 36C rules of the NC Uniform Trust Code have been in effect about two years and by now most lawyers are aware of the rules and can see the advantages. We can now make some modifications to irrevocable trusts and the clerk has more authority.

Q: How do you stay current in your field?

Beyond the CLE courses that I take each year, I subscribe to the Thompson West Information Service. That provides immediate access to updates and case law changes. I can take my laptop to our chalet in Black Mountain and stay completely updated. I know that I have responded more quickly than others because of this efficiency of quick access. I also devote my full-time practice to this field, which keeps my knowledge base narrow, but deep.

Q: How is certification important in your practice area and in your region?

Board certification may not be absolutely necessary, but it has been a real assistance to me. My knowledge of this practice area allows me to handle some cases that would be too difficult for others. I do think that the certification is necessary to compete effectively in this region, however. There are 100 counties in the state and 128 board certified specialists in estate planning and probate law. This translates to 1.28 per county. In Henderson County, we have an extreme concentration with four specialists, so it's very important and necessary.

Q: How does specialization benefit the public?

The specialization program does two important things for the public. First, it gives the public ready access to a higher level pool of legal talent. All members of the pool have proven this by meeting the program standards, including a rigorous examination. Second, the program provides assurance that any professional included is currently qualified because he/she has to annually maintain certification standards. I think that's a critical component of the program.

Q: Is there a recent case you've had where your specialization came in handy?

E. K. at the Alex Gambal Winery in Beaune, France.

Yes, in fact, I've worked a great deal on *Livesay vs. Carolina First Bank,* 665 SE 2nd 158, which involves the question of whether or not assets from a revocable trust are available to pay creditor's claims if estate assets are insufficient. I believe that this was the first case to involve Section 36C-5-505 heard by the court of appeals.

Q: How do you see the future of specialization?

If I were to graduate from law school now, I would immediately start working toward specialization and become board certified as soon as possible. I think the program will continue to grow and provide opportunities for young lawyers.

Q: In what other areas would you like to see certification offered?

I think securities law could keep a lawyer busy for the next 25 years. This is an area that has tremendous potential and need.

Q: What would you say to encourage other lawyers to pursue certification?

I would suggest that they not be concerned at all with the argument that becoming a specialist holds you to some higher standard. I have never encountered that in my practice. On the contrary, I believe that specializing in one's practice actually serves to minimize the risk of malpractice because the lawyer's knowledge of his/her practice area is deep. ■

For more information on the State Bar's specialization programs please visit us on the web at www.nclawspecialists.gov.

E. K. on a recent Backroads Adventure Biking Trip picnic lunch, overlooking the 12th century castle, Château de Bazoches.

IOLTA Update

As the North Carolina State Bar celebrates its 75th Anniversary, NC IOLTA is celebrating its 25th anniversary! The program was established in 1983 when approved by the State Bar Council and the North Carolina Supreme Court, and the first trustees were appointed by the council. Implementation of the program (the fifteenth in the nation) began in 1984 so that the first grant could be made in 1985. In 2008, NC IOLTA reaches another milestone by implementing a mandatory program following the NC Supreme Court order received in October 2007 (with compliance required by June 30, 2008.) In recognition and celebration of these milestones, we plan to publish in these pages during the next year a series of articles about the program that we hope will inform Bar members about the history of our governance, income, and grants. So, watch this space for expanded coverage of NC IOLTA.

Mandatory IOLTA Transition

In 2008, NC IOLTA staff implemented the transition to a mandatory IOLTA program, which began in mid-October 2007 when the State Bar received the order from the NC Supreme Court to establish a mandatory program. By June 30, 2008, all active NC attorneys were to be in compliance by certifying when paying 2008 State Bar dues that they are exempt or have established all general client trust accounts as IOLTA accounts. During this transition year, NC IOLTA sent letters and a certification document used to cure deficiency to attorneys who failed to certify IOLTA status when paying dues. This certification document can also be found on the State Bar website.

Since the move to a mandatory program, we have added over 3,200 IOLTA accounts. We found that almost 22% of income for the first two quarters of 2008 came from accounts established as IOLTA accounts since November 2007.

Income

For the 2007 calendar year, NC IOLTA reported the highest income in its history—over $4.6 million. Our total income increased (by 3%) despite declining income in the last two quarters of the year due to decreased principal balances in the accounts. We attribute the increase in total income to two developments: 1) an increased number of accounts as attorneys began to establish new accounts under the now mandatory program and 2) an improved policy on IOLTA accounts at RBC Bank, one of our largest banks, beginning in December.

Despite lower interest rates and lower principal balances being held in IOLTA accounts, due to the economic downturn, income for the first two quarters 2008 was up by 20% compared to that period last year. Again, we attribute that increase in income to two developments: 1) improved policies on IOLTA accounts at several of our largest banks and 2) an increased number of accounts as attorneys established new accounts under the now mandatory program. First quarter income increased by 28% while second quarter income increased by only 13% despite the continued addition of new IOLTA accounts. While our program is being affected by the downturn in the economy, we hope the change to mandatory IOLTA will provide stable or increased income for the year.

Banks

There are now over 100 banks in North Carolina that have IOLTA accounts. We continue to work with banks to improve their IOLTA policies. Banks that waive service charges and/or provide a higher yield on IOLTA accounts are noted on the NC IOLTA Bank List posted on the State Bar website. Presently, all of the six banks with the largest number of IOLTA accounts are higher yield banks.

IOLTA Grants Administered

For 2008, NC IOLTA is administering just over $4 million in grants—a record for the program—with an additional $125,000 in matching grants offered. Over $3.6 million is going to organizations providing civil legal assistance to the indigent through staffed programs or by using volunteer attorneys. Almost a half million dollars in grants goes to other programs that work to improve the administration of justice, such as law school summer internships in the public interest, judicial education, and loan repayment assistance for young attorneys working in public interest positions. Given economic conditions at the time, the trustees also added funds from 2007 income ($150,000) to the Reserve Fund which is used to keep grants stable during income downturns. That fund now holds over $1.8 million.

In December, the NC IOLTA trustees will be reviewing 43 grant applications requesting

CONTINUED ON PAGE 35

Bank News

There are now 103 banks in North Carolina that have IOLTA accounts. A current Bank List is kept updated on the NC State Bar website (www.ncbar.com/programs/banklist.asp). Banks that waive service charges or pay a higher yield on IOLTA accounts are highlighted on that list.

↑ **First Citizens Bank** - Effective October 1, First Citizens Bank improved their policy on IOLTA accounts by increasing their interest rate to 0.80%. This positive change, along with their policy of waiving service charges on IOLTA accounts, places them in the group of banks providing a higher yield on IOLTA accounts as designated on the Bank List on the State Bar website. Such positive bank policies result in substantially more funds available for IOLTA grants.

Bruno's Top Tips for Tip Top Trust Accounting

By Bruno DeMolli

Closing Dormant Trust Accounts

Since the Chief Justice entered the order requiring all lawyers to participate in the Interest on Lawyers Trust Accounts (IOLTA) program in late last year, the staff of the IOLTA office has recorded over 3,200 new IOLTA accounts. The program does not show a net gain of that many accounts, however. In the process of registering new accounts, the IOLTA staff discovered many lawyers have kept a trust account open although client funds are no longer being deposited into the account. Dormant trust accounts provide the opportunity for misuse. The IOLTA staff is working with lawyers and law firms to close dormant accounts consistent with a lawyer's duties under the Rules of Professional Conduct. If you have a dormant trust account, the following questions and answers will help you to wind down and close the account.

Q. Must I maintain a client trust account if I am in private practice?

No. If you do not have a reason to hold client funds, you do not have to maintain a client trust account.

Q. I have a trust account I no longer use, but some funds remain in the account. How do I close the account?

Either transfer the funds from the old account into a new account or disburse the funds to the owners as shown on the client ledgers for the account. *See* Rule 1.15-3(b)(5). Any funds on deposit for a client who is no longer represented by the lawyer or the law firm should be disbursed to the owners thereof. If transfer to a new account is appropriate, you must document the transfer of the funds from the old account to the new account and accurately note the deposit of funds on the appropriate clients' ledgers. Rule 1.15-3(b)(5). If any interest was credited to the dormant account, this money should be sent to the NC IOLTA program. If there are unclaimed or unidentified funds in the account, see the questions below on how to handle such funds.

Q. Do I need to notify the State Bar if I am closing an account?

No, but if it is an IOLTA account, you must notify NC IOLTA. 27 N.C.A.C. 1D, Rule .1316(d). Use the NC IOLTA Status Update form available on the State Bar website, www.ncbar.gov, and in the *Lawyer's Handbook*. You may also call the NC IOLTA office at 919-828-0477 to request a form.

Q. If a lawyer holds funds in a general trust account and does not know either the identity or the location of the owner of those funds. What should be done with the money?

The lawyer must first make a diligent attempt to determine the identity and/or the location of the owner of the funds in order that an appropriate disbursement might be made. This means questioning personnel and investigating records and other sources of information in an effort to determine the identity and location of the owner of the funds. Rule 1.15-2(q). If the lawyer is unsuccessful in ascertaining the identity or the location of the owner of the funds, the lawyer must determine whether the funds qualify for escheatment to the state of North Carolina pursuant to N.C. Gen. Stat. Chap 116B. Pending escheatment, the funds should be held and accounted for in the lawyer's trust account. If qualified, such funds must be escheated to the state even if it is believed, *but cannot be conclusively documented,* that the funds belong to the lawyer.

Q. How do I escheat unidentified or unclaimed funds in my trust account?

If you have diligently attempted to determine the identity and location of the owner of the funds without success, the funds should be sent to the Escheat and Unclaimed Property Section of the Office of the North Carolina State Treasurer. Contact the State Treasurer's office for the forms necessary to transfer funds or for assistance in completing the forms.

NC Department of State Treasurer
Unclaimed Property Program
325 North Salisbury Street
Raleigh, NC 27603-1385
Phone: (919) 508-1000; 508-5979
Email: unclaimed.property@nctreasurer.com
Website: www.nctreasurer.com ■

IOLTA Update (cont.)

over $5.7 million in grants for 2009. Last year, the trustees reviewed 39 applications requesting $5 million in grant funds and made $4 million in grants.

State Funds Administered

For the 2007 calendar year, NC IOLTA administered over $5.2 million in state funds that flow through the NC State Bar to legal aid organizations as prescribed by statute. Through the third quarter of 2008, NC IOLTA administered over $3.1 million in state funds, including payments on new recurring appropriations for two organizations for foreclosure protection work.

NC IOLTA Trustees and Leadership

At the September NC IOLTA Board meeting, we welcomed the Honorable Linda M. McGee of the North Carolina Court of Appeals as a new IOLTA trustee, beginning a three year term on September 1, 2008. She fills the seat vacated by James M. Talley Jr. who completed two terms as an IOLTA trustee. The council also reappointed two trustees to serve a second three-year term: Robert G. Baynes, a former State Bar president (1988-89), who is in private practice in Greensboro (with Nexsen Pruet), and Brenda B. Becton of Durham, a retired administrative court judge. As appointed by the council, Marion A. Cowell of Charlotte is serving as chair of the NC IOLTA trustees for 2008-09, and Larry S. McDevitt of Asheville is serving as vice-chair. ■

Young Solo Personal Injury Lawyer Seeks Same for Walks on Beach, Possible Office-Share Arrangement

By Suzanne Lever

To reduce expenses, pool resources, and keep from going stir crazy, solo practitioners may find it advantageous to share office space with other lawyers. Besides the obvious conflicts that arise when a Felix Unger shares offices with an Oscar Madison, lawyers considering an office-sharing arrangement need to be aware of the potential ethical problems inherent in such arrangements. Specifically, office-sharing lawyers will have to take steps to ensure that the public is not mislead as to the relationship between the lawyers, protect client confidences, and avoid conflicts of interest. In addition, the lawyers must make sure that any fee sharing between the lawyers complies with the rules of ethics.

When lawyers not in the same law firm share office space, there is a risk that the public will assume that the lawyers are part of the same firm. Office-sharing lawyers must take steps to clarify the relationship. They must ensure that in any communications they make, the public is not misled that there is any professional relationship between the lawyers when no such relationship exists. For example, office-sharing lawyers must avoid naming their affiliation in a way that implies there is a partnership or other professional association where none exists. Pursuant to RPC 116, lawyers involved in office sharing must make certain that the public is not misled into thinking that the affiliated attorneys are operating as a partnership. Rule 7.5 prohibits lawyers from practicing under a false or misleading firm name or letterhead. Rule 7.5(e) prohibits lawyers from stating or implying that they practice in a partnership or other organization except when that is the fact. Comment [4] to Rule 7.5 specifically forbids office-sharing lawyers from using a name such as "Unger and Madison," which falsely suggests that the lawyers are practicing together in a firm. The lawyers must use their own individual letterhead, pleadings, business cards, invoices, and advertising. In addition, all office signs must clearly reflect the relationship of the lawyers practicing in the office. If office-sharing lawyers receive legitimate indications that their representations may be misleading, they must take steps to remedy the problem.

A primary concern for lawyers who share office space is the protection of client confidences. Lawyers who share offices must take extra steps to protect client confidentiality. The lawyers' confidential files should not be accessible by other office sharers. Lawyers must make certain that staff members are familiar with the Rules of Professional Conduct and take proper measures to ensure that the staff members act in compliance with the rules. *See* Rule 5.3. Lawyers should restrict access to computers, telephone lines, copiers, and fax machines. Lawyers may share common space such as a reception area and conference rooms. However, conference rooms and offices should be organized in such a way that confidential client conferences cannot be overheard. Lawyers may share a receptionist if the receptionist does not have access to confidential information and does not give callers or visitors the impression that the lawyers are operating as a firm. The receptionist should answer the phone with a generic greeting such as "law offices" instead of "law offices of Unger and Madison."

Lawyers who share office space must also be wary of disqualifying conflicts of interest. Rule 1.0 defines a "law firm" as "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law." If the office-sharing lawyers are perceived as practicing together in a law firm, they risk being disqualified from representing adverse parties under Rule 1.10(a). Comment [2] to Rule 1.0 explains that whether an association of lawyers constitutes a law firm depends upon the manner in which the association holds itself out to the public. The comment specifically states that "[a] group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another." While CPR 274 provides that it is conceivable that two or more lawyers may maintain an office sharing arrangement and represent conflicting interests if the confidentiality of each attorney's practice is maintained both in appearance and fact, the safest course of action is to enter into adverse representation only in exceptional circumstances and only with the informed written consent of each client.[1]

Finally, any fee sharing between office-sharing lawyers must meet the requirements set out in Rule 1.5(e). Rule 1.5(e) provides that a division of a fee between lawyers who are not in the same firm may only be made if the total fee is reasonable, the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation, and the client agrees in writing to the arrangement.

Lawyers should contact their malpractice insurance carrier to discuss vicarious malpractice liability risks relating to office-sharing arrangements and to get the insurer's risk management suggestions and advice. Sharing office space with another lawyer presents a unique set of ethical considerations. However, if the lawyers sufficiently address the issues presented, an office sharing arrangement can be both ethical and cost effective. If Oscar and Felix could do it, so can you. ■

Endnote

1. The ethics opinions that were issued under the superseded Code of Professional Responsibility are called "CPR's." These opinions still provide guidance on issues of professional conduct except to the extent that a particular opinion is overruled by a subsequent opinion or by a provision of the current Rules of Professional Conduct. You may obtain a copy of a CPR opinion by calling the ethics department at the State Bar.

My Journey from Alcoholism to Sobriety, Recovery, and the Bench

By Anonymous

Standing at the doorway of the courtroom, I reflected on how I had come to be here as a civil court judge. My reverie took me back to another time when I stood at the door of a different room, where a meeting of recovering alcoholics was in progress. I recalled wondering how I had ended up there as one of them.

My background had all the classic signposts for this journey into alcoholism—an alcoholic father and assorted alcoholic aunts and uncles. But when did this happen to me? How had this happened to me?

Like many young girls, I started drinking at parties with my boyfriend. Unlike most adolescents, though, I experienced blackouts at age 14. Despite this horrible side effect, far more important to me was the way alcohol made me feel—freer, happier, less gawky, and more like I belonged.

I married young, became a mother at age 17, and continued to drink. While I usually drank until I was drunk and often did things I was later ashamed of, drinking was still fun and thrilling. Orange juice and vodka was an exotic concoction to an inexperienced teen-aged mother who was suddenly in charge of another human life. Drinking also made my marriage more bearable.

Curiously, while my marriage was deteriorating, I found that I had a desire to achieve, in part because I knew I would eventually have to take care of myself and my young child. This drive spurred me to finish high school and enroll in college. When my marriage finally ended, I started raising my young daughter all alone. While taking evening classes at law school, I worked full-time to pay for tuition. In the short span of five years, I had transformed myself from a naive, dependent wife into a disciplined, motivated superwoman. I could do anything!

In spite of my new confidence and ambition, I continued to drink. Now I drank to relieve the stress of constant study, work, and classes. So what if I was hung over occasionally and short-tempered at my job? I deserved a little fun. So what if my school attendance fell off? I could always make it up. So what if stops at a bar became increasingly frequent, evening-long activities? So what if I stumbled home long after midnight, leaving my sister to care for my daughter by default? So what? I was a single, working mother who planned to join a noble profession—I was going to be a lawyer. I was on the ladder up, a trailblazer, a woman on fire.

I graduated and moved to a new city where I held a variety of legal jobs in city and state government, including working for a judge. I had new friends, a new boyfriend, and what I hoped would be a new relationship with my daughter and my drinking. This time, I told myself, I would take the upper hand and control how much and how often I drank.

When that didn't happen, I recognized that my drinking was out of control. People were starting to tell me that I might have a problem. Maybe, I thought, but I found a quick solution to deal with it. Anyone who mentioned my drinking was cut out of my life forever—cleanly, swiftly, sharply. Those people were replaced by new "friends" who drank like me. And I spent less time with my daughter, boyfriend, and old comrades.

As things continued to worsen, I shifted the blame for my need to drink onto my boyfriend, the weather, my boss, the grocer, the bank teller, and even the mayor. When more and more people told me I had a problem, I stopped drinking in public. I stopped going out, preferring to spend evenings alone in the privacy of my home. I felt safer there, since I was afraid of where I might end up in a blackout if I went out drinking.

At about this point I realized I couldn't stop drinking. I was addicted. So I started going to therapists and psychiatrists. I stopped and started drinking many times. My continued drinking completely wreaked havoc with my relationships. My daughter left home at 20 and moved across the country to escape. I was asked to leave one job. At the next one, I managed to work fairly steadily, but my behavior was such that people, like my daughter, stayed far away.

At my sister's insistence I agreed to enter a five-day hospital detoxification program. I was afraid if I refused, she, too, might leave. Once in detox, the doctors convinced me that I would benefit by going to a rehabilitation center. I did, spending a month there. When I returned from the rehab center, my boss was hesitant to let me return to work. He didn't want an alcoholic working for him. His reluctance fueled my desire to stop drinking for good in much the same way that my divorce motivated me to finish school so many years before.

In sobriety, I became active in bar association activities, including the State Bar Association's Committee on Lawyer Alcoholism and Drug Abuse and the American Bar Association's Commission on Impaired Attorneys. I also began to explore the possibility of becoming a judge.

CONTINUED ON PAGE 56

Lawyers Receive Professional Discipline

Disbarments

Harold W. Beavers of Greensboro surrendered his law license and was disbarred by the Wake County Superior Court. Beavers misappropriated over $825,000 in entrusted funds. (Please note: this surrender applies only to Harold W. Beavers of Greensboro. It does not relate to Greensboro patent lawyer Walter L. Beavers, who has no professional association with Harold W. Beavers.)

The DHC disbarred Charlotte attorney **Charles L. Alston Jr.** Alston misappropriated client funds, neglected and failed to communicate with multiple clients, collected excessive fees and failed to return unearned fees, failed to participate in the fee dispute program, failed to respond to the Grievance Committee, and failed to hold client funds in his trust account.

The DHC disbarred Roanoke Rapids attorney **Tonya Crew**. Crew misappropriated $22,000 in entrusted funds.

Barry G. Roberts of Atlanta, Georgia, was disbarred by order of reciprocal discipline. Roberts surrendered his law license to the Supreme Court of Georgia after pleading guilty to making a false statement to an IRS agent.

Marsha B. Stone of Asheville surrendered her law license and was disbarred by the Wake County Superior Court. Stone misappropriated over $23,000 in entrusted funds.

Suspensions & Stayed Suspensions

The DHC imposed a two year suspension on **Scott Lamb** of Winston-Salem. The suspension is stayed for two years upon compliance with numerous conditions. Lamb misappropriated $500.00 from his law firm employer.

Disability Inactive Status

The DHC transferred **Ralph Edward McLaurin Jr.** to disability inactive status.

Censures

Perry Mastromichalis of Raleigh was censured by the Grievance Committee for his failure to file timely responses to discovery in two cases. The Grievance Committee also found that he failed to communicate adequately with his clients.

Sandra Knox of Cornelius was censured by the Grievance Committee for failing to communicate with her client and failing adequately to explain the consequences of signing a quitclaim deed, preparing deeds that were not in the best interest of her client, filing a "corrected" deed without her client's knowledge or consent, and making false or misleading statements to the Grievance Committee.

Reprimands

Charlotte attorney **Ilonka Aylward** received a reprimand from the Grievance Committee for an improper contingency fee arrangement, disclosing confidential client information, failing to cease work in the matter after discharge by the client in an effort to secure her fee, and filing a frivolous Notice of Charging Lien.

Raleigh attorney **Anthony Blalock** was reprimanded by the Grievance Committee for making improper statements to an arresting officer and causing a scene in the courtroom.

David Ferris of Raleigh was reprimanded by the Grievance Committee for aiding in the unauthorized practice of law. Ferris prepared legal documents for a real estate closing for a nonlawyer entity and not at the direction of the buyer or seller involved in the transaction.

Ericka Hart of Rocky Mount was reprimanded by the Grievance Committee. Hart closed her law practice in September 2006 and left several matters incomplete until contacted by the State Bar in July 2007. Hart failed to reconcile her trust account and could not identify funds in the account when initially asked to do so, failed to timely complete final title opinions, and failed to disburse title insurance premiums. The Grievance Committee recognized in mitigation significant personal problems, cooperation with the State Bar when contacted, and that Hart has now identified the funds in her trust account and completed necessary services for her clients.

Patricia King of Charlotte was reprimanded by the Grievance Committee for drafting a will and other documents without meeting the client and took actions as executrix before the will was probated.

Raleigh attorney **Colleen Kochanek** was reprimanded by the Grievance Committee for failing to deposit mixed funds into a trust account. The funds were a legal fee to which her former law firm was entitled to a portion and which she was required to deposit into a trust account until the parties' rights to the funds were determined. She also failed to deal forthrightly with a partner of her former law firm.

Donald Marcari of Chesapeake, Virginia, was reprimanded by the Grievance Committee for sending a direct mail solicitation letter on which the advertising notice was smaller than the law firm letterhead and for mailing the letter in an envelope that did not include the language "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES."

The Grievance Committee reprimanded Greensboro lawyer **David Noble** for failing to appear at his client's court hearing, resulting in the suspension of the client's driving license.

Charlotte lawyer **Timothy Smith** was reprimanded by the Grievance Committee for failing to appear for his client's court date, failing to cooperate with a local grievance committee, neglecting a client's divorce case and delaying settlement of the case, failing to properly supervise his legal assistant, and failing to promptly participate in the the State Bar's fee dispute process.

Gregory Stafford of Pittsboro was reprimanded by the Grievance Committee for failing to appear for his client's court date, resulting in his client's arrest.

Greenville attorney **Amanda Stroud** was reprimanded by the Grievance Committee for failing to respond to the committee, and failing to participate in the State Bar's mandatory fee dispute resolution process.

Petitions for Reinstatement

On September 8, 2008, the DHC reinstated **Arch K. Schoch V** of High Point. Schoch had been suspended for three years effective July 2005 for unlawfully and willfully possessing and using crack cocaine in his home and in his law office. The Office of Counsel did not oppose his petition for reinstatement.

On July 30, 2008, the secretary reinstated **Leroy R. Castle** of Durham after a six month active suspension for neglect of clients, failure to communicate, and failure to respond to the Grievance Committee. The remaining 18 months of Castle's suspension are stayed upon his compliance with numerous conditions. The Office of Counsel did not oppose his petition for reinstatement. ■

In Memoriam

Phillip W. Allen
Reidsville

James N. Brennan IV
Charlotte

Joe K. Byrd
Drexel

Henry T. Drake
Wadesboro

Laura J. Gendy
Raleigh

Larry Ray Green
Charlotte

Worth H. Hester
Elizabethtown

Robin L. Hinson
Charlotte

Samuel A. Howard Jr.
Jacksonville, FL

H. Bruce Hulse Jr.
Goldsboro

James C. Johnson Jr.
Concord

John M. Kennedy
Raleigh

Charles T. Kivett Sr.
Greensboro

Sherwood F. Lapping
Carthage

Robert A. Lockamy Sr.
Hope Mills

Philip E. Lucas
Winston-Salem

Charles A. Moore
Ahoskie

Robert B. Morgan Sr.
Lillington

Douglas F. Osborne Jr.
Eden

Herbert F. Pierce
Burlington

J. William Russell
Asheville

Albert L. Singleton
Greenville

Samantha Gray Steffen
Winston-Salem

Ephraim M. Tate Jr.
Hickory

William I. Thornton Jr.
Durham

Dovey E. Watson Jr.
Fishers, IN

John Webb
Raleigh

Robert P. Wilcox
Raeford

Calder W. Womble
Winston-Salem

State Bar Outlook (cont.)

them or not. No one has ever been disciplined for violating an ethics opinion separate and apart from an underlying rule.

To the best of my knowledge, the Supreme Court of North Carolina has taken cognizance of an ethics opinion on only one occasion. In 1985, the Court considered the validity of CPR 326, which had been challenged by Robert Gardner, a North Carolina lawyer, and his employer, the Nationwide Mutual Insurance Company.[3] Gardner and Nationwide objected to the opinion's conclusion that the conflict of interest rules and the statute prohibiting the practice of law by corporations barred the insurance industry's use of in-house counsel to defend their insureds. As the State Bar's then ethics counsel, I was assigned the case. After ignominious defeat at the trial level, the Supreme Court agreed to hear our appeal. Prior to rendering its decision, the Court asked the parties to brief the question of whether a challenge to an ethics opinion actually presents a justiciable issue. I submitted a masterful and notorious brief on the issue,[4] arguing for justiciability. Ultimately, the Court decided not to address that question. Instead, it undertook to decide the case in a relatively rare exercise of its inherent authority to deal with members of the legal profession, and affirmed the validity of CPR 326, at least insofar as the unauthorized practice theory was concerned.

Although the Supreme Court's action in the Gardner case did little to clarify the justiciable character of ethics opinions, it did underscore their great significance. Ethics opinions are important and relevant because they are invested with the coercive authority of the State Bar and the moral authority of thousands of self-respecting and self-regulating lawyers who want to do the right thing. For those lawyers, the opinions define professional norms and expectations. More than safe harbors, they are indispensable navigational aids through the Scylla of trial and the Charybdis of transaction. Prosaic rather than poetic, they nevertheless chart well the odyssey of our professional lives. They can also be copied, in whole or in part, without attribution, at least until the next meeting of the Ethics Committee. ■

L. Thomas Lunsford II is the executive director of the North Carolina State Bar.

Endnotes

1. Alice Neece Mine, Suzanne Lever and Nicole P. McLaughlin
2. *See* 2007 FEO 10 and 2008 FEO 2. These opinions concern ethical issues relating to a lawyer's service as attorney for a school board. They cannot possibly be summarized.
3. *Gardner v. NC State Bar*, 316 N.C. 285 (1986). CPR 326 was a affirmation of two prior ethics opinions, Opinion 682 and CPR 19. Gardner and Nationwide initially filed a petition with the State Bar seeking reconsideration of the earlier opinions. After the council adopted CPR 326, Gardner and Nationwide sought judicial review under the Administrative Procedures Act.
4. This was the so-called "Brief to Nowhere" about which we heard so much in the recent presidential campaign.

Council Rejects Prohibition on Security Interst in Marital Residence; Committee Withdraws Proposed Opinion on Allegations of Prosecutorial Misconduct

Council Actions

At a meeting on October 24, 2008, the State Bar Council adopted the opinions summarized below upon the recommendation of the Ethics Committee:

2008 Formal Ethics Opinion 8

Division of Fees in Departure Provision of Law Firm's Employment Agreement

Opinion rules that a provision in a law firm employment agreement for dividing legal fees received after a lawyer's departure from a firm must be reasonable and may not penalize or deter the withdrawing lawyer from taking clients with her.

2008 Formal Ethics Opinion 10

Guidelines for Fees Paid in Advance

Opinion surveys prior ethics opinions on legal fees, sets forth the ethical requirements for the different types of fees paid in advance, authorizes minimum fees earned upon payment, and provides model fee provisions.

The council also voted against the adoption of Proposed 2008 Formal Ethics Opinion 12, *Prohibition on Security Interest in Marital Residence to Secure Legal Fee*, which was recommended for adoption by the Ethics Committee. Instead, the council voted to issue the proposed opinion with one inquiry on whether a lawyer may foreclose on client property while still representing the client. See below.

Ethics Committee Actions

At its meeting on October 23, 2008, the Ethics Committee, on a divided vote, withdrew Proposed 2008 FEO 9, *Frivolous Claims of Prosecutorial Misconduct.* A majority of the committee determined that frivolous claims are satisfactorily addressed in Rule 3.1. No opinion will be issued under this formal opinion number. Proposed 2008 FEO 11, *Representation of Beneficiary on Other Matters While Serving as Foreclosure Trustee*, was sent to a subcommittee for further study. Two proposed opinions, previously published in the *Journal*, were revised and appear below. Five new proposed opinions are also published for comment. The comments of readers are welcomed.

Proposed 2006 Formal Ethics Opinion 3
Representation in Purchase of Foreclosed Property
October 23, 2008

Proposed opinion rules that a lawyer who represented the trustee or served as the trustee in a foreclosure proceeding at which the lender acquired the subject property may represent all parties on the closing of the sale of the property by the lender provided the lawyer concludes that his judgment will not be impaired by loyalty to the lender and there is full disclosure and informed consent.

Inquiry #1:

Seller (a financial institution) acquires property as a result of the foreclosure by execution of the power of sale contained in a deed of trust securing its own note or a note that it was servicing. Buyer entered into a contract with Seller to buy the property that was repossessed via foreclosure.

Attorney A regularly handles foreclosure proceedings for Seller either serving as the trustee or as the lawyer for the trustee (both roles are referred to herein as the "foreclosure lawyer"). In the current proceeding Attorney A served as the foreclosure lawyer.

Buyer would like Attorney A to close the sale. May Attorney A represent both Buyer and Seller on the closing of the transaction, including examining title and giving an opinion as to title to Buyer or on behalf of Buyer?

Opinion #1:

Yes, provided there is full disclosure to Buyer of all potential risks and Buyer gives informed consent. Multiple representation of parties to a real estate closing is allowed in RPC 210 and in 97 FEO 8. The latter opinion holds that a lawyer who regularly represents a real estate developer may represent the buyer and the developer in the closing of residential real estate. Rule 1.7 permits multiple representation notwithstanding the existence of a concurrent conflict of interest if the lawyer concludes that he or she can provide competent and diligent representation to each affected client and the clients give informed consent which is confirmed in writing.

If Attorney A's relationship with Seller is such that Attorney A's personal financial interests in preserving and protecting his relationship with Seller impairs his independent professional judgment, ability to provide competent and diligent representation to Buyer, and/or his ability to be objective and impartial when making disclosures necessary to obtain informed consent, then Attorney A may not seek the informed consent of Buyer and may not represent Buyer in the closing.

If Attorney A concludes that, under the circumstances, he can still exercise independent professional judgment on behalf of all of the parties to the closing, he may seek the informed consent of Buyer. Obtaining the informed consent of the buyer in this situation means that the buyer must be advised of the potential risks to a purchaser of property that was previously foreclosed including the distinctions between marketable and insurable title and between a non-warranty and a warranty deed. The buyer must also be advised of his potential liability for homeowners' association dues. Most importantly, the lawyer must disclose his prior participation in the foreclosure and explain that the lawyer must examine his own work on the foreclosure to certify title to the property.

Attorney A may represent all of the parties to the closing even if Buyer procures financing to purchase the property (including financing provided by Seller). Attorney A must be able fully to explain, without objection from the

lender/seller, the loan documents, setting forth the terms of repayment (and potentially including a balloon payment and/or prepayment penalty), and the status of title including any material exceptions between the lender's and owner's title insurance policies.

If Buyer consents to the representation, Attorney A may proceed unless and until it becomes apparent that he cannot manage the potential conflict between the interests of the lender/seller and the buyer. If the lawyer determines that he can no longer exercise his independent professional judgment on behalf of both clients, he must withdraw from the representation of both clients.

Inquiry #2:

Under the facts of Inquiry #1, the contract signed by Buyer provides that Seller will select the title and closing agent. However, the contract specifies that the buyer is also entitled to legal representation at the buyer's own expense. Seller names Attorney A as the "title/closing agent" for the sale to Buyer. While serving in the capacity of "title/closing agent," Attorney A proposes to provide legal representation to both Buyer and Seller with the consent of both parties. May Attorney A represent both Buyer and Seller on the closing of the transaction, including examining title and giving an opinion as to title to Buyer?

Opinion #2:

No. Although 97 FEO 8 allows a lawyer to represent both the developer and the buyer of a house in a subdivision with the informed consent of the buyer, the purchase of foreclosed property presents special risks to a purchaser that are not present in the purchase of a subdivision property. The purchaser of foreclosed property requires legal representation that is completely unimpaired by even the potential of a conflict of interest. The fact that Attorney is named in the contract as the title/closing agent indicates that there is a close business and professional relationship between Attorney A and Seller. It is apparent that, under these circumstances, it is in Attorney A's personal financial interest to preserve and protect his relationship with Seller. This self-interest will impair Attorney A's independent professional judgment and his ability to be objective and impartial when making the disclosures necessary to obtain informed consent from Buyer. Therefore, Attorney A may not seek the informed consent of Buyer and may not represent Buyer in the closing.

Inquiry #3:

Under the facts of Inquiry #2, Attorney B regularly represents Seller on various matters but did not represent the trustee on the foreclosure of the subject property and did not act as trustee. May Attorney B represent both Buyer and Seller on the closing of the transaction, including examining title and giving an opinion as to title to Buyer?

Opinion #3:

Yes, subject to fulfilling the conditions on common representation set forth in Opinion #1.

Inquiry #4:

Under the facts of Inquiry #2, Attorney A intends to represent only the interests of Seller and does not intend to represent Buyer in closing the transaction. May Attorney A limit his representation in this manner?

Opinion #4:

Yes, Attorney A may limit his representation to Seller. However, if he does so, in light of the provisions of the purchase contract, it is possible that Buyer will be misled about Attorney A's role. Therefore, Attorney A must fully disclose to Buyer that Seller is his sole client, he does not represent the interests of Buyer, the closing documents will be prepared consistent with the specifications in the contract to purchase, and, in the absence of such specifications, he will prepare the documents in a manner that will protect the interests of his client, Seller, and, therefore, Buyer may wish to obtain his own lawyer. *See, e.g.*, RPC 40 (disclosure must be far enough in advance of the closing that the buyer can procure his own counsel), RPC 210, 04 FEO 10, and Rule 4.3(a). Because of the strong potential for Buyer to be misled, the disclosure must be thorough and robust.

Inquiry #5:

Under the facts of Inquiry #4, if Attorney A limits his representation to Seller, but closes the transaction, does he have any duty to disclose or discuss any of the following with Buyer: defects of title; the difference between insurable title and marketable title; the exceptions contained in the title policy and the need for exception documents at closing; and the terms of the sales contract?

Opinion #5:

If Attorney A explicitly limits his representation to Seller, he cannot give any legal advice to Buyer except the advice to secure counsel. Rule 4.3(a). In light of the significant issues involved for Buyer, Attorney A should advise Buyer to obtain his own lawyer.

Inquiry #6:

Under the facts of Inquiry #4, Attorney A closes the transaction. The contract required the buyer to pay the closing agent's "customary closing fee," therefore, Buyer pays a fee to Attorney A as the title/closing agent. Subsequently, a defect of title caused by Seller is discovered. May Attorney A be held liable to Buyer for malpractice?

Opinion #6:

This is a legal question that is outside the purview of the Ethics Committee.

Inquiry #7:

Under the facts of Inquiry #1, the contract to buy the property signed by Buyer contains the following conditions: Seller will select the title and closing agent; Seller will pay the title examination fee and the premium for the owner's title insurance policy; Buyer will pay the title/closing agent's "customary closing fee;" and all closing transactions will be held at the title/closing agent's office. The contract specifies that the buyer is entitled to legal representation at the buyer's own expense. Seller names Attorney A as the "title/closing agent" for the sale to Buyer.

May Attorney A represent both Buyer and Seller on the closing of the transaction, including examining title and giving an opinion as to title to Buyer?

Inquiry #7:

No, *see* Opinion #2 above.

Inquiry # 8:

Under the facts of Inquiries #2, 3, and 4, Buyer asks Attorney Y to represent him on the closing of the purchase of the property. Buyer wants Attorney Y to examine the title to the property, give his opinion as to title, and act as Buyer's agent at the closing.

Attorney A insists that the contract requires Buyer to accept him as the closing agent for the transaction even if he only represents Seller. May Attorney A refuse to allow Attorney Y to participate in the closing as Buyer's lawyer?

Opinion #8:

No. Clients are entitled to legal counsel of their choice. *See, e.g.*, RPC 48. A lawyer may not participate in any scheme or contract that states or implies that a party to the transaction does not have the right to obtain independent legal counsel to represent his interests. Drafting such a provision for a client or agreeing to provide representation pursuant to such a provision is unethical because the provision will chill the buyer's right to independent legal counsel even if the enforceability of the provision is doubtful.

Attorney A may, by the terms of the purchase agreement, be the designated closing agent for the sale. However, if Buyer hires a lawyer to represent his interests by examining and giving him an opinion on title and participating in the closing on his behalf, the other lawyer may not interfere with this representation. *See, e.g.*, Rule 4.2. In addition, Attorney A must comply with the prohibition in Rule 4.2(a) on direct communications with a represented person without the consent of the lawyer for the represented person. Any funds that are delivered by Buyer to Attorney A are held by Attorney A in a fiduciary capacity for Buyer and must be disbursed in accordance with and upon fulfillment of the conditions of the contract. *See* Rule 1.15-2(a). If Buyer chooses to obtain his own lawyer, Attorney A may not interfere with Buyer's representation by his chosen lawyer or needlessly complicate the ability of that lawyer to represent Buyer. Both lawyers shall endeavor to insure that closing responsibilities are completed expeditiously and in compliance with RPC 191 and the Good Funds Settlement Act (if applicable). Specifically, both lawyers shall endeavor expeditiously to provide and review draft documents, to resolve title issues subject to the terms of the contract, to deliver the executed documents, to update title, and to disburse the closing funds.

Inquiry #9:

Under the facts of Inquiries #2, 3, and 4, Attorney A agrees that Attorney Y will represent Buyer's interests at the closing. However, Attorney A claims that he is still entitled to a fee from Buyer because of the terms of the contract.

May the legal fee for Attorney A's representation of Seller be charged to Buyer?

Opinion #9:

Whether the contract to purchase the property requires Buyer to pay Attorney A's fee for representation of Seller is a legal question outside the purview of the Ethics Committee. However, a lawyer may be paid by a third party, including an opposing party, provided the lawyer complies with Rule 1.8(f) and the fee is not illegal or clearly excessive in violation of Rule 1.5(a). *See* RPC 196. Attorney A's time and labor relative to the closing may be reduced because of the legal services performed by Attorney Y on behalf of Buyer. If so, this fact should be taken into account in determining whether the "customary fee" for closing the transaction is excessive and an appropriate reduction in the fee should be made. Rule 1.5(a). Because Buyer is represented by Attorney Y, Attorney A may not charge or collect any money for representing Buyer.

Inquiry #10:

A realtor prepared the purchase contract. It alters the usual closing arrangements, waives many "normal" rights of a buyer, and favors the seller by allowing the seller to terminate the contract for any reason and return the deposit without further liability. Is the realtor engaged in the unauthorized practice of law when preparing the contract? Does it matter whether the realtor is a buyer's agent, a seller's agent, or a dual agent? Does it matter whether the seller and the buyer have different realtors? Is consumer protection legislation needed?

Opinion #10:

These questions do not relate to the professional responsibilities of lawyers and cannot be answered by the Ethics Committee.

Proposed 2008 Formal Ethics Opinion 3 Assisting a Pro Se Litigant October 23, 2008

Proposed opinion rules a lawyer may assist a pro se litigant by drafting pleadings and giving advice without making an appearance in the proceeding and without disclosing or ensuring the disclosure of his assistance to the court unless required to do so by law or court order.

Inquiry:

Without appearing in a proceeding or otherwise disclosing or ensuring the disclosure of his assistance to the court, may a lawyer assist a pro se litigant by giving advice on the content and format of documents to be filed with the court including pleadings, by drafting those documents for the litigant, or by giving advice about what to do in court including which witnesses to call, what evidence to present, and how to make opening and closing arguments?

Opinion:

Yes, a lawyer may assist a pro se litigant without disclosing his participation or ensuring that the litigant discloses his assistance unless the lawyer is required to do so by law or court order. Allowing such assistance is consistent with the duty of confidentiality in Rule 1.6, the authority to limit the scope of representation in Rule 1.2, and the duty to assist individuals who cannot afford legal representation as expressed in the Preamble and Rule 6.5. Remaining undisclosed does not violate

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, prior to the next meeting of the committee in January 2009.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

the duty of honesty set forth in Rules 1.2(d), 4.1, or 8.4(c) or the duty of candor to the tribunal set forth in Rule 3.3(b) unless there is a court order or a law that requires the lawyer to make the disclosure.

In ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-446 (2007), the ABA Standing Committee on Ethics and Professional Responsibility held that a lawyer may provide legal assistance to a pro se litigant without disclosing or ensuring the disclosure of the nature or extent of the assistance. With regard to whether it is dishonest or a violation of the duty of candor to the tribunal for the lawyer's assistance to remain undisclosed, the committee wrote that the answer to the question depends on:

> whether the failure to disclose that fact would constitute fraudulent or otherwise dishonest conduct on the part of the client, thereby involving the lawyer in conduct violative of [Model] Rules 1.2(d), 3.3(b), 4.1(b), or 8.4(c). In our opinion, the fact that a litigant submitting papers to a tribunal on a pro se basis has received legal assistance behind the scenes is not material to the merits of the litigation. Litigants ordinarily have the right to proceed without representation and may do so without revealing that they have received legal assistance in the absence of a law or rule requiring disclosure. *Id.*

The committee added the following on whether it is dishonest for the lawyer's assistance to be undisclosed:

> [the question] turns on whether the court would be misled by failure to disclose such assistance. The lawyer is making no statement at all to the forum regarding the nature or scope of the representation....Absent an affirmative statement by the client, that can be attributed to the lawyer, that the documents were prepared without legal assistance, the lawyer has not been dishonest within the meaning of Rule 8.4(c). For the same reason, we reject the contention that a lawyer who does not appear in the action circumvents court rules requiring the assumption of responsibility for their pleadings. Such rules apply only if a lawyer signs the pleading and thereby makes an affirmative statement to the tribunal concerning the matter. Where a pro se litigant is assisted, no such duty is assumed. *Id.*

The conclusion that the Model Rules of Professional Conduct do not compel disclosure of a lawyer's background assistance to a pro se litigant is sound and equally applicable to the North Carolina Rules of Professional Conduct.

In response to the decision of a federal magistrate judge in *Delso v. Trustees for the Retirement Plan for the Hourly Employees of Merck & Co., Inc.*, 2007 WL 766349 (D.N.J. 2007), holding that a lawyer violated New Jersey Rule of Professional Conduct 3.3 by "ghostwriting" pleadings for a pro se litigant, the New Jersey Supreme Court Advisory Committee on Professional Ethics issued an ethics opinion that holds that a lawyer who provides drafting assistance to a pro se litigant is not required to notify the court of his role unless "such assistance is a tactic by a lawyer or party to gain advantage in litigation by invoking traditional judicial leniency toward pro se litigants." New Jersey Supreme Court Advisory Committee on Professional Ethics, Op. 713 (2008). However, judicial leniency can not make up for the substantial disadvantage a nonlawyer who appears pro se experiences when the opposing party is represented in court by legal counsel. A lawyer who recommends that a client appear pro se for the sole purpose of gaining the tactical advantage of judicial leniency is providing incompetent legal advice in violation of Rule 1.1 and such conduct is prohibited on this basis regardless of whether there is disclosure to the court of the lawyer's assistance.[1]

A pro se litigant who seeks a lawyer's advice or assistance outside the courtroom is a client of the lawyer although the representation is limited in scope and the individual may not pay for the advice or assistance. Although the lawyer does not appear in court or sign pleadings, the lawyer must obey the Rules of Professional Conduct applicable to the representation of any client. This includes compliance with the prohibition in Rule 3.1 on filing or asserting frivolous pleadings. The duty of confidentiality in Rule 1.6(a) is also applicable and prohibits the lawyer from revealing information acquired in the professional relationship with the client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or one of the exceptions to the duty of confidentiality in Rule 1.6(b) applies. The only applicable exception allowing disclosure of the lawyer's assistance to a pro se litigant is found in Rule 1.6(b)(1). It allows disclosure of confidential information to comply with the Rules of Professional Conduct, law, or court order. As noted above, the Rules of Professional Conduct do not compel disclosure.

Rule 1.2(c) allows a lawyer to limit the scope of a representation if the limitation is reasonable under the circumstances. As noted in Comment [6] to the rule, "[t]he scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client." Limiting the lawyer's representation to extrajudicial advice and assistance is reasonable when an individual cannot afford to be represented in court. In 2005 FEO 10, the utility of unbundled legal services, or "legal services that are limited in scope and presented as a menu of legal service options from which the client may choose," to clients of limited means was acknowledged. The opinion holds that an internet based law practice may offer unbundled legal services to pro se litigants provided the client gives informed consent to the limited representation and the lawyer makes an independent judgment as to the limited services that can be competently provided under the circumstances. The opinion permits the lawyer to provide assistance to a pro se litigant without entering an appearance in the client's case and without requiring disclosure of the lawyer's behind the scenes assistance.

The Rules of Professional Conduct and prior ethics opinions recognize the importance of providing assistance to individuals who cannot afford representation. The Preamble, Rule 0.1, states that "[t]he basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer." Rule 6.5, *Limited Legal Services Programs*, permits a lawyer operating

under the auspices of a program sponsored by a non-profit organization or court to provide short term limited legal services to a client without expectation that the lawyer will provide continuing representation to client. These short-term services frequently include advice about the nature and content of pleadings the client should file and advice about what to expect and what to do in court. The rule does not require a participating lawyer to disclose his assistance to the court in which pleadings are filed or to ensure that the client makes the disclosure. The importance of encouraging lawyers to participate in such programs is manifested by the relaxation of the rules on conflicts authorized by Rule 6.5(a)(1) and (b).

Similarly, RPC 114 fosters legal assistance to individuals who cannot afford representation but fall outside the economic or subject matter eligibility requirements of legal services organizations. The opinion confirms that it is ethical for a legal services lawyer to draft a complaint for a pro se litigant's signature, explain how to file the complaint, and review courtroom procedure, including advice about strategy, tactics, or litigation techniques, without listing herself as the attorney of record. There should be no distinction between what a legal services lawyer and a lawyer in private practice may ethically do behind the scene to assist those who cannot afford full representation.

For the public policy reasons set forth above and because disclosure of the lawyer's assistance is not compelled by the Rules of Professional Conduct, a lawyer may assist a pro se litigant without disclosing his assistance to the court and without ensuring that the client discloses the assistance to the court unless the lawyer is compelled to make the disclosure by law or by a court order.[2]

Endnotes

1. Accord ABA Formal Opinion 07-446 (2007)(undisclosed assistance "will not secure unwarranted 'special treatment' for that litigant or otherwise unfairly prejudice other parties to the proceeding. Indeed, many authorities studying ghostwriting in this context have concluded that if the undisclosed lawyer has provided effective assistance, the fact that a lawyer was involved will be evident to the tribunal. If the assistance has been ineffective, the pro se litigant will not have secured an unfair advantage.").
2. Consistent with 32 CFR 776.57, a military lawyer who is licensed in another jurisdiction may provide legal advice and assistance to military personnel. This opinion does not limit or expand that authority.

Proposed 2008 Formal Ethics Opinion 12 Initiating Foreclosure Proceedings Against Client October 23, 2008

Proposed opinion rules that a lawyer may not initiate foreclose on a deed of trust on a client's property while still representing the client.

Inquiry #1:

Lawyer represents Client in a domestic case. In exchange for Lawyer's services, Client executed a promissory note, which was secured by a deed of trust on property that is not involved in the domestic action. Lawyer sent Client a "Notice of Demand" regarding payment on the note. Soon thereafter, Lawyer initiated foreclosure proceedings in an effort to collect on the deed of trust. Lawyer continues to represent Client in the domestic case.

May Lawyer initiate foreclosure proceedings against Client while continuing to represent Client ?

Opinion #1:

No. Although Lawyer could acquire a deed of trust on the property if he complied with Rule 1.8(a), enforcing the security interest while currently representing the grantor of the interest, even in an unrelated matter, creates a conflict of interest in violation of Rule 1.7(a)(2). Moreover, Rule 8.4(g) provides that it is professional misconduct for a lawyer intentionally to prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3. Lawyer should not initiate foreclosure proceedings against Client until the representation is concluded.

As a matter of procedure, comment [16] to Rule 1.8 provides that, prior to initiating a foreclosure on property subject to a lien securing a legal fee, a lawyer must notify a client of the right to require the lawyer to participate in the State Bar's mandatory fee dispute resolution program.

Proposed 2008 Formal Ethics Opinion 13 Audit of Real Estate Trust Account by Title Insurer October 23, 2008

Proposed opinion rules that, to prevent and discourage defalcations, a lawyer may allow a title insurer to audit the lawyer's real estate trust account and reconciliation reports, provided the account is only used for real estate closings.

Inquiry #1:

Under North Carolina law, title insurance policies are issued upon receipt of title certification from a licensed North Carolina lawyer. A title insurer will only issue title assurances to approved lawyers as provided by N.C. Gen. Stat. §58-26.1. In the vast majority of real estate closings, the lender delivers the proceeds of the new loan (for the purchase or refinancing of the real estate) to the approved lawyer to be disbursed from the approved lawyer's trust account upon the closing of the transaction. Lenders and buyer/borrowers of real estate frequently request title insurance coverage in the form of a closing protection letter in which the title insurer agrees to reimburse the lender and/or the buyer/borrower for, among other things, actual loss on account of the fraud or dishonesty of the approved lawyer in handling the lender's funds. Closing protection letters are necessary to facilitate real estate transactions in North Carolina as lenders are unwilling to risk their funds without these assurances from title insurers.

Title insurers are experiencing increasing liability for lawyer defalcations pursuant to closing protection letters and title insurance policies issued in connection with real estate transactions. In addition, parties to real estate transactions who are not covered by title insurance are suffering losses related to the misuse of funds deposited in real estate trust accounts.

To provide the assurances required by lenders and buyer/borrowers, title insurers need a way to assess whether funds from real estate trust accounts are being disbursed and accounted for properly. Many real estate lawyers now use outside reconciliation services to reconcile their trust accounts. Title insurers would like to request either an audit of an approved lawyer's trust account and/or review of the lawyer's trust account reconciliation reports to ensure the safety of the funds and protect the interests of those whose funds are placed in the trust account and rely upon the appropriate disbursement of those funds.

Lawyer A is an approved lawyer with Title Insurer. Title Insurer has issued at least one closing protection letter for Lawyer A. May Lawyer A voluntarily permit Title Insurer to audit his real estate trust account?

Opinion #1:

Yes, Lawyer A may voluntarily permit

Title Insurer to audit any trust account used solely for real estate closings. Rule 1.6 requires a lawyer to protect from disclosure all information acquired during the professional relationship including information about a client contained in the lawyer's trust account records. Nevertheless, confidential information may be revealed when the client gives informed consent, disclosure is impliedly authorized to carry out the representation, or a specific exception to disclosure set forth in paragraph (b) of Rule 1.6 applies. Although the specific exceptions are not applicable here, the general exception that permits disclosure to carry out the representation is applicable. A self-evident objective of both the lender and the buyer/borrower in a real estate transaction is that the loan proceeds will be used for the purpose for which they were intended and not misused or misappropriated by the closing lawyer. Therefore, there is implied consent by real estate clients to disclose such information as may be necessary to prevent defalcations including information necessary for a title insurer to perform an audit of the lawyer's trust account. Implied consent extends to reporting any defalcation that is discovered to the State Bar.

It cannot be assumed that non-real estate clients impliedly authorize the disclosure of confidential information about their deposits to a lawyer's trust account to a title insurance company. Therefore, a lawyer may only consent to an audit of a trust account used solely for real estate closings.

Before disclosure, Lawyer A should obtain the assurances of Title Insurer that the information disclosed will be used for no other purpose than to confirm the proper use of funds and the lawyer's compliance with the trust accounting requirements in Rule 1.15, or, in the event a defalcation is discovered, to disclose such information to the State Bar or other appropriate authorities. *See* Rule 1.15. If a defalcation is identified, any lawyer employed by the title insurance company is required by Rule 8.3(a) to inform the State Bar.

Inquiry #2:

May Lawyer A voluntarily permit Title Insurer to examine and review Lawyer A's reconciliation reports whether generated by Lawyer A and his staff, or generated by an outside reconciliation service employed by Lawyer A?

Opinion #2:

Yes, provided the reconciliation reports are for a trust account that is used solely for real estate closings. *See* Opinion #1 above.

Inquiry #3:

Title Insurer conditions designation as an approved lawyer on the lawyer's agreement that Title Insurer may audit the lawyer's trust account and review the lawyer's reconciliation reports upon request. May a lawyer seek designation as an approved lawyer for Title Insurer?

Opinion #3:

Yes, provided the audit is limited to trust accounts, or the reconciliation reports therefore, that are used solely for real estate closings. *See* Opinion #1 above.

Inquiry #4:

Would the responses to any of the preceding inquiries be different if multiple lawyers in the same firm use the same real estate trust account?

Opinion #4:

No.

Inquiry #5:

As noted above, many real estate lawyers use outside reconciliation services to reconcile their trust accounts. Is this practice permitted under the Rules of Professional Conduct?

Opinion #5:

Yes, a lawyer may delegate reconciliation to a company or to a non-lawyer who is not employed in the lawyer's firm provided the lawyer makes reasonable efforts to ensure that the person(s) providing the reconciliation services understands the lawyer's professional duties with regard to the management of the trust account under Rule 1.15 and also with regard to the protection of client confidences under Rule 1.6. The lawyer remains professionally responsible for the proper management and reconciliation of the account. *See* Rule 5.3.

Proposed 2008 Formal Ethics Opinion 14 Attribution When Using Written Work of Another October 23, 2008

Proposed opinion rules that it is not an ethical violation when a lawyer fails to attribute or obtain consent when incorporating into his own brief, contract, or pleading excerpts from a legal brief, contract, or pleading written by another lawyer and placed into the public domain.

Inquiry #1:

Lawyer A submitted a brief to the trial court that contained eight pages, verbatim, from an appellate brief previously drafted and filed by Lawyer B in an unrelated case. Lawyer B does not work for Lawyer A's firm. Lawyer A did not credit Lawyer B for the copied portion of the brief, or obtain Lawyer B's permission to incorporate the eight pages, entirely unchanged, into his own brief. Lawyer A added references to additional relevant case law. Lawyer A properly cited all court opinions, legal treatises, and published or copyrighted works upon which he had relied. The only pre-existing writings included within his brief without attribution were the relevant legal arguments submitted by Lawyer B in an earlier appeal.

Did Lawyer A violate any Rule of Professional Conduct through his unattributed use of eight pages of Lawyer B's brief?

Opinion #1:

No. Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving "dishonesty, fraud, deceit, or misrepresentation. Upon filing with a court, a brief enters the public domain; a lawyer should have no expectation of retaining intellectual property rights in the brief. Lawyers often rely upon and incorporate the work of others when writing a brief, whether that work comes from a law firm brief bank, a client's brief bank, or a brief that the lawyer finds in a law library or posted on a listserv on the Internet. By its nature, the application of the common law is all about precedent, which invites the re-use of arguments that have previously been successful and have been upheld. It would be virtually impossible to determine the origin of the legal argument in many briefs. Moreover, the utilization of the work of others in this context furthers the interests of the client by reducing the amount of time required to prepare a brief and thus reducing the charge to the client. *See* RPC 190 (1994). It also facilitates the preparation of competent briefs by encouraging lawyers to use the most articulate, carefully researched, and comprehensive legal arguments.

When using the work of another, the

lawyer must still provide competent representation. Rule 1.1. This means that the lawyer must verify any citations in the excerpt to ensure that the content and interpretation of caselaw, statute, and secondary sources is correct.

Although consent and attribution are not required, if a lawyer uses, verbatim, excerpts from another's brief and the lawyer knows the identity of the author of the excerpt, it is the better, more professional practice, for the lawyer to include a citation to the source.

Inquiry #2:

If Lawyer B, or another lawyer, learns that Lawyer A submitted a brief to the court that contained verbatim portions of a brief previously drafted and filed by Lawyer B, does the lawyer have a duty to report Lawyer A to the State Bar?

Opinion #2:

No. *See* Opinion #1 above.

Inquiry #3:

Lawyer A's law firm maintains a "brief bank," consisting of memoranda of law and briefs previously written by members of the firm and filed with trial or appellate courts. Is it a violation of the Rules of Professional Conduct for Lawyer A to use, verbatim, a portion of a memorandum or brief contained in the brief bank without attribution?

Opinion #3:

No. *See* Opinion #1 above.

Inquiry #4:

Is it a violation of the Rules of Professional Conduct for Lawyer A to sign his name to a brief, written by an associate at Lawyer A's direction and under Lawyer A's supervision, without including the associate's name on the brief?

Opinion #4:

No, so long as Lawyer A does not charge the client for work he did not perform.

Inquiry #5:

Is it a violation of the Rules of Professional Conduct for Lawyer A to copy, verbatim and without attribution, clauses from a contract, pleading, discovery request, or other similar document prepared by someone else for use in a similar document that Lawyer A is preparing for a client?

Opinion #5:

No. It is not dishonest or misleading to incorporate such clauses in similar documents, without consent of the author or attribution, if the lawyer determines that the pleadings, contracts, wills, and other similar documents are in the public domain and are not original works of authorship.

Inquiry #6:

May a law firm distribute a "canned" newsletter to its clients that is obtained from a commercial publishing company without disclosing that the lawyers in the law firm did not actually author the material?

Opinion #6:

No. If the content of a newsletter is portrayed as the original work of the firm's lawyers, the distribution of the newsletter under the law firm's name, without disclosing the true authorship of the material contained in the newsletter, is misleading and a violation of Rule 7.1(a).

Proposed 2008 Formal Ethics Opinion 15 Civil Settlement That Includes Agreement Not to Report to Law Enforcement Authorities October 23, 2008

Proposed opinion rules that, provided the agreement does not constitute the criminal offense of compounding a crime and is not otherwise illegal, and does not contemplate the fabrication, concealment, or destruction of evidence, a lawyer may participate in a settlement agreement of a civil claim that includes a non-reporting provision prohibiting the plaintiff from reporting the defendant's conduct to law enforcement authorities.

Inquiry:

Attorney represents Client who has been sued in a civil action for misappropriation of funds under the exercise of a durable power of attorney. The complaint alleges that Client engaged in conduct that is both a civil wrong and a crime. Law enforcement was not contacted by the plaintiff and has never been involved in the matter. A settlement is offered by the plaintiff which includes a condition that the plaintiff will not contact law enforcement to report the alleged crime, but specifies that the plaintiff will cooperate with law enforcement in any investigation that may occur on the authorities' own initiative to the extent required by law (so as not to constitute obstruction of justice). Attorney believes that the settlement agreement is in Client's best interest and would like to recommend to Client that he accept the settlement offer.

May Attorney participate in the negotiation and settlement of the civil suit if the settlement includes the non-reporting condition?

Opinion:

Yes, provided the non-reporting condition does not constitute the criminal offense of compounding a crime and is not otherwise illegal, and the agreement does not contemplate the fabrication, concealment, or destruction of evidence, including witness testimony.

98 FEO 19 provides guidance for a lawyer representing a victim with a civil claim that also constitutes a crime and is analogous to the current inquiry. In 98 FEO 19, the victim's civil claim for fraud was related to the criminal charges of conspiracy to defraud. The opinion rules that if the victim's attorney has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the victim's attorney has not attempted to exert or suggest improper influence over the criminal justice system, the victim's attorney does not violate the Rules of Professional Conduct by proposing that the victim acquiesce to a plea agreement in exchange for a confession of judgment from the defendant in the civil action. A critical component of the opinion is the condition that the proposed settlement of the civil claim may not exceed the amount to which the victim may be entitled under applicable law.

The purpose of the latter condition is to prevent the common law crime of compounding a felony which occurs when one with knowledge that another has committed a felony agrees not to inform the authorities in exchange for something of value. *State v. Hodge*, 142 N.C. 665, 55 S.E.2d 626 (1906).

98 FEO 19 rules that a lawyer may present, participate in presenting, or threaten to present criminal charges to resolve a civil matter provided the criminal charges are related to the civil matter and the lawyer reasonably believes that the charges are well-grounded in fact and warranted by law and, further provided, the lawyer's conduct does not constitute a crime under the law of North Carolina. The ABA Standing Committee on Ethics and Professional Responsibility has opined that

under these same circumstances, a lawyer is permitted to partipate in a settlement agreement in which his client agrees to refrain from instigating prosecution. *See* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 363 (1992); *see also* New York City Op. 1995-13 (lawyer whose client could be charged with both civil and criminal offense may offer a settlement in the civil matter that includes a condition that the opponent not inform law enforcement authorities of the criminal matter). Similarly, the Committee on Legal Ethics of the West Virginia State Bar held that, under limited circumstances, civil litigants should not be prevented from agreeing to forego the filing of criminal charges in exchange for money paid to resolve their civil suits. *See Committee on Legal Ethics v. Printz*, 416 S.E.2d 720 (1992). The opinion cautioned lawyers, however, that they must be careful not to use the threat of criminal prosecution to obtain more than is owed or have their clients agree not to testify at future criminal trials. "Seeking payment beyond restitution in exchange for foregoing criminal prosecution or seeking any payments in exchange for not testifying at a criminal trial ... are still clearly prohibited." *Id.* at 727.

Although there is no express prohibition in the Rules of Professional Conduct against such an agreement, a lawyer must be careful to avoid the criminal offense of compounding a crime, which in turn would violate the prohibition in Rule 8.4(b) against "criminal act[s] that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." This means that the amount paid to settle the civil claim may not exceed the amount to which the plaintiff would be entitled under applicable law; in other words, ***no*** compensation may be paid to the plaintiff for the plaintiff's silence. Moreover, the lawyers for both the plaintiff and the defendant must also be careful to avoid any implication that the settlement includes the client's agreement to testify falsely or to evade a subpoena in a criminal proceeding should criminal charges subsequently be brought by the authorities. Such conduct clearly violates the prohibitions in Rule 3.4(a) and (b) on counseling or assisting another to destroy or hide evidence, testify falsely, or avoid serving as a witness. Finally, if there is a legal requirement to report certain conduct to the authorities, as, for example, there is with child abuse and neglect, a lawyer may not participate in a settlement agreement that includes a non-reporting provision that is illegal. *See e.g.* N.C.G.S. 7B-301.

Provided the settlement agreement does not constitute the criminal offense of compounding a crime, is not otherwise illegal, and does not contemplate the fabrication, concealment, or destruction of evidence (including witness testimony), a lawyer may participate in a settlement agreement of a civil claim that includes a provision that the plaintiff will not report the defendant's conduct to law enforcement authorities.

Proposed 2008 Formal Ethics Opinion 16 Advising Client About Litigation Funding Agreements October 23, 2008

Proposed opinion rules that a lawyer who represents a personal injury claimant who received a cash advance from a litigation funding company whose contracts may be usurious and illegal pursuant to Odell v. Legal Bucks, LLC, *should provide legal advice to the client as to her rights under the contract or refer the client to a lawyer who is competent to give advice in this area of law.*

Inquiry #1:

Law Firm handles a wide range of personal injury claims. Increasingly, Law Firm's clients approach their lawyers requesting information about, or facilitation of, cash advances from third party entities. One such company is Legal Bucks, LLC. Legal Bucks, and other similar companies, advance money to borrowers who are expecting to recover in pending tort claims, but who need money for personal expenses before their claims go to trial or settle.

Clients who use Legal Bucks's services are requested to have their lawyer execute a document entitled "Attorney's Acknowledgement of Transfer and Conveyance of Proceeds." Clients sign a separate document entitled "Transfer and Conveyance of Proceeds and Security Agreement."

On September 2, 2008, the North Carolina Court of Appeals issued *Odell v. Legal Bucks, LLC*, 2008 N.C. App. Lexis 1619. In the opinion, the court ruled that the "Transfer and Conveyance of Proceeds and Security Agreement" used by Legal Bucks is invalid and unenforceable. The decision held that the company, which charged an interest rate in excess of 16%, had violated the state's usury laws as well as the state's consumer finance and unfair and deceptive trade practices laws.

What duty does a lawyer who works for Law Firm have to facilitate repayment of funds advanced to a client by litigation funding companies such as Legal Bucks in light of the opinion issued in *Odell v. Legal Bucks, LLC*?

Opinion #1:

2000 FEO 4 allows a lawyer to sign a statement acknowledging a finance company's interest in a client's recovery provided, however, if the lawyer subsequently determines that the finance company's assignment of recovery proceeds does not create a valid lien on the recovery proceeds, the lawyer must disburse the recovery funds as instructed by the client. Similarly, if the client disputes that the debt is owed (or disputes the amount of the debt), the lawyer must hold the disputed funds in his trust account until the dispute is resolved, a court orders the release of the funds, or the lawyer interpleads the funds. *See* Rule 1.15-3, cmt. [14]; 2000 FEO 4.

Odell v. Legal Bucks casts doubt on the validity of the financing company's security interest in the client's recovery. Therefore, the lawyer's duty is to advise the client as to her legal rights under the changed circumstances and, in particular, the legal effect of the opinion on the client's duty to honor the contract with the financing company. If the lawyer does not feel that he is competent to advise the client on contract law, usury, and other legal issues relevant to the enforceability of the agreement, he should refer the client to a lawyer competent and experienced in such law. Advice to the client may include advice on whether to file an action against the financing company or to renegotiate the amount owed under the financing agreement. At a minimum, the lawyer should not transfer the funds to the financing company, but should hold the funds in his trust account until the issue of the validity of a Legal Bucks contract with the particular client is resolved.

In addition, the lawyer must determine whether he has an independent contractual duty to pay the funding company under the "Attorney's Acknowledgement" document and, if so, whether this personal interest may impair or affect his ability to give unbiased advice to the client. *See* Rule 1.7(b). If the lawyer determines that it will not impair his advice or judgment, he should inform the client of the conflict, obtain the client's informed consent, confirmed in writing, and

proceed with giving the client advice about her options. If the lawyer determines that his personal interest is in conflict with the interest of his client or may otherwise impair his judgment, he must refer the client to another, independent lawyer competent to give advice about the relevant contractual issues.

Inquiry #2:

Should the lawyer advise his client to repay the principal amount advanced by the litigation funding company plus a lawful rate of interest? If so, what amount of interest should be offered to the litigation funding company?

Opinion #2:

A lawyer should advise his client of the legal effect of the *Legal Bucks* opinion on the client's duty to honor the contract with the funding company and discuss possible resolutions with the client, including repaying the loan amount at a lower interest rate, or the lawyer should refer the client to a lawyer who is competent to do so. The amount of interest that may be lawfully offered on such a financing agreement is a legal question that is outside the purview of the Ethics Committee.

Inquiry #3:

May a lawyer advise a client to make any payment under a contract that has been adjudicated by a state appellate court to be "invalid and unenforceable"?

Opinion #3:

See Opinions #1 and #2.

Inquiry #4:

Lawyer is aware that the lawyers for the plaintiffs in *Legal Bucks* may bring a class action against the company. What duty does Lawyer have to advise his client of the pendency of a class action when the client may be eligible to join the class?

Opinion #4:

Lawyer has a duty to inform the client of any known information regarding a class action when the client may be eligible to join the class. Competent representation dictates that the lawyer provide the client with legal advice as to the client's potential participation in a class action against the financing company or to refer the client to appropriate legal counsel for legal guidance on the issue. *See* Rule 1.4, Rule 1.1.

Inquiry # 5

What duty does Law Firm have to inform past clients about the pendency of a request for class action certification or about a subsequent certification of a class, when the former clients are likely to have an interest in the subject matter of the litigation?

Opinion #5:

Law Firm does not have a duty to inform former clients about potential participation in a class action, although the clients may have an interest in the subject matter of the litigation. However, there is nothing that prohibits Law Firm from contacting former clients to provide them with this information. If Law Firm intends to bring the class action itself and would like to solicit former clients to join the class, the firm may do so without violating the prohibition on in-person solicitation in Rule 7.3(a) because of the pre-existing professional relationship between the lawyers in the firm and the clients.

Inquiry # 6:

Until the litigation is finalized, may a lawyer ethically participate in a litigation funding advance at the request of a client and with the consent of the client to the extent of executing the "Attorney's Acknowledgement" or a similar document purporting to bind the client to payments now deemed usurious?

Opinion # 6:

2000 FEO 4 provides that a lawyer who receives notice of an assignment of the proceeds of a personal injury claim should "take care to examine the applicable law to determine if the assignment is valid and enforceable. If the assignment appears to be illegal or otherwise unenforceable, the lawyer may not acknowledge or honor the assignment." If the law is unclear, the lawyer may only sign the acknowledgment of the assignment subject to the conditions set out in 2000 FEO 4.

Proposed 2008 Formal Ethics Opinion 17
Filing a Notice of Appeal in a Court-Appointed Juvenile Case
October 23, 2008

Proposed opinion rules that a lawyer appointed to represent a parent at the trial of a juvenile case may file a notice of appeal to preserve the client's right to appeal although the lawyer does not believe that the appeal has merit.

Inquiry:

Indigent parents who are parties in abuse, neglect, dependency, and termination of parent rights (TPR) juvenile proceedings are entitled to appointed counsel at both the trial court and the appellate levels. N.C. Gen .Stat. §§7B-602; 7B-1101; 7A-27; 7A-451.

Rule 3A of the North Carolina Rules of Appellate Procedure, N.C. R. App. P. 3A, applies to juvenile cases alleging abuse, neglect, or dependency or in which a TPR was sought. Rule 3A provides, in part,

> ....If the appellant is represented by counsel, both the trial counsel and appellant must sign the notice of appeal,...

The remaining provisions of the rule protect the privacy interests of the juvenile and provide for expedited procedures and calendaring priority.

An indigent parent has the right to appeal the trial court's decision. However, an appointed trial lawyer will, on occasion, decline to sign the notice of appeal, as required by N.C. R. App. P. 3A and as requested by the client, because the lawyer is concerned that the appeal lacks merit and the lawyer may be in violation of Rule 11(a) of the North Carolina Rules of Civil Procedure and Rule 3.1 of the Rules of Professional Conduct. N.C. R. Civ. P. 11(a) provides in part,

> ...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation....

An appellate lawyer is appointed by the Office of the Appellate Defender to represent an indigent parent on the appeal. This lawyer reviews the record to determine whether there are justiciable issues. On many occasions, the appellate lawyer finds justiciable issues that the trial lawyer did not identify. However, on some occasions, the appellate lawyer determines that there are

CONTINUED ON PAGE 53

Amendments Approved by the Supreme Court

At a conference on October 9, 2008, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

Amendments to the Rules on Discipline and Disability

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

The amendments to the disciplinary rule on confidentiality allow the State Bar to refer a matter to the Chief Justice's Commission on Professionalism; restate the rule that the State Bar can provide information about admonitions, letters of warning, and letters of caution to another state bar if the requesting bar maintains the same level of confidentiality; and clarify that the confidentiality rule does not prohibit the State Bar from providing evidence or information to law enforcement and regulatory agencies or from providing information and making referrals to the State Bar's Lawyer Assistance Program.

Amendments to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

In addition to authorizing the accreditation of stress management and diversity training courses, the amendments also make adjustments to procedural requirements in the CLE rules including eliminating the requirement of service pursuant to Rule 4 of the Rules of Civil Procedure in favor of service by registered or certified mail at the member's last address on record with the State Bar.

Amendments to the Rules Governing Specialization

27 N.C.A.C. 1D, Section .1700, The Plan for Legal Specialization, Section .2100, Certification Standards for the Real Property Law Specialty; Section .2300, Certification Standards for the Estate Planning and Probate Law Specialty; and Section .2400, Certification Standards for the Family Law Specialty

The rule limiting members of the Board of Legal Specialization to two consecutive three-year terms is amended to allow the board's chair to serve an additional three-year term. The amendments to the certification standards for the real property, estate planning and probate law, and family law specialties adjust the CLE requirements for certification and recertification to encourage applicants and specialists to attend a broader range of appropriate CLE programs.

Amendments to Rule of Professional Conduct 3.6, Trial Publicity

27 N.C.A.C. 2, Rules of Professional Conduct

The amendments to the comment to Rule 3.6, *Trial Publicity*, clarify the following: a lawyer must take measures to insure that agents and assistants comply with the rule; a lawyer may not file pleadings or other public records solely to take advantage of the "safe harbor" in paragraph (b) for extrajudicial statements about information contained in a public record; and, given sufficient prior notice, a lawyer should seek judicial intervention to prevent statements that may violate the rule.

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined, deletions are interlined.**

Amendments Pending Approval of the Supreme Court

At its meeting on October 24, 2008, the North Carolina State Bar Council voted to adopt the following amendments for transmission to the North Carolina Supreme Court for approval:

Proposed Amendments to the Rules on Discipline and Disability

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

The proposed amendments to the discipline rules revise and replace the existing rule limiting the time period for filing grievances and provide guidelines for the Grievance Committee and for the Disciplinary Hearing Commission when imposing discipline.

Proposed Amendments to the IOLTA Rules and Rules of Professional Conduct

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts

27 N.C.A.C. 2, Rules of Professional Conduct

The proposed amendments are technical in nature and are intended to correct matters that were overlooked when the amendments to implement mandatory IOLTA were adopted last January.

Proposed Amendments to the Regulations Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendment clarifies when a lawyer is billed for attendee fees that are not paid by a sponsor of a program.

Proposed Amendments to the Rules Governing Specialization

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization, Section .2900, Certification Standards for the Elder Law Specialty

The proposed rule amendments in Section .1700 allow a specialist to take CLE courses that are not in the specialty practice area or a related field but, because of their advanced nature or subject matter, will improve the lawyer's proficiency as a specialist. Proposed Section .2900 contains the rules for a new specialty in elder law.

Proposed Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals

The proposed amendments allow the board's review panel to take into consideration reformation of character and other mitigating factors when determining whether an applicant will be denied certification because of a conviction of a crime. The proposed amendments also revise the review and appeal procedures when an applicant for certification fails the examination.

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

Proposed Amendments

At its meeting on October 24, 2008, the Council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Rules on Discipline and Disability

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

.0131 Effect of Prior Discipline

(a) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one or two prior impositions of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the immediate prior proceeding unless the prior discipline imposed was more than six years prior to the current proceeding or the offense for which the prior discipline was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

(b) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of three or more prior impositions of discipline within the past six years, the degree of discipline in the current proceeding shall be a minimum of suspension unless the most compelling mitigating circumstances clearly predominate.

(c) None of these standards shall require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment, authorized by N.C. Gen. Stat. § 84-28 and the North Carolina State Bar Discipline and Disability Rules, for an offense of professional misconduct.

Proposed Amendments to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The proposed amendments to the accreditation standards deny CLE credit to any substantive law course taught by a disbarred lawyer but allow CLE credit for a professional responsibility course taught by such a person.

.1519 Accreditation Standards

The board shall approve continuing legal education activities which meet the following standards and provisions.

(a)~~(1)~~....

(b)~~(2)~~ ....

(c)~~(3)~~ ....

(d)~~(4)~~ Continuing legal education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience. ~~in a setting physically suitable to the educational activity of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes~~.

(1) Credit shall not be given for any continuing legal education activity taught or presented by a disbarred lawyer except a course on professional responsibility (including a course or program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities). The advertising for the activity shall disclose the lawyer's disbarment.

(e) Continuing legal education activities shall be conducted in a setting physically suitable to the educational activity of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f)~~(5)~~....

Proposed Amendments to the IOLTA Rules

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts

These proposed technical amendments are necessitated by the transition from voluntary to mandatory IOLTA.

Rule .1312 Source of Funds

Funding for the program carried out by the board shall come from funds remitted from depository institutions by reason of interest earned on trust accounts established

by lawyers pursuant to Rule 1.15-4 of the Rules of Professional Conduct and Rule .1316 of this subchapter, voluntary contributions from lawyers, and interest, dividends, or other proceeds earned on the board's funds from investments or from other sources intended for the provision of legal services to the indigent and the improvement of the administration of justice.

Proposed Amendments to the Plan for Legal Specialization

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization; Section .1900, Continuing Legal Education for the Purposes of the Board of Legal Specialization

The proposed amendments to the hearing and appeal rules will clarify the conditions under which an applicant may view a failed examination and limit the applicant's appeal right to re-grading of the failed examination. The proposed amendments to the CLE rules for specialization will ensure that applicants for certification receive the same teaching credit for multiple presentations as permitted by the CLE rules (27 N.C.A.C. 1D, Rule .1605(a)).

.1801 Reconsideration of Applications, Failure of Written Examinations, and Appeals

(a) Applications Incomplete and/or Applicants Not in Compliance with Standards for Certification

....

(b) Failure of a Written Examination Prepared and Administered by a Certification Committee

(1) Review of Examination - Within 30 days of the mailing of the notice from the board's executive director that the applicant has failed the written examination, the applicant may review his or her examination at the office of the board at a time designated by the executive director. The applicant will be given the applicant's scores for each question on the examination. The applicant shall not remove the examination from the board's office.

(2) Petition for Grade Review - If, after reviewing the examination, the applicant feels an error or errors were made in the grading, ~~he or she~~ the applicant may file with the executive director a petition for grade review. The petition must be filed within 45 days of the mailing of the notice of failure and should set out in detail the ~~area or areas~~ examination questions and answers which, in the opinion of the applicant, have been incorrectly graded. Supporting information may be filed to substantiate the applicant's claim. ~~At the time of filing the petition, the applicant must either~~

~~(A) request a hearing before a three-member panel of the board; or~~

~~(B) waive his or her right to a hearing before the board and request that the board render a decision based upon its review of the applicant's examination, supporting documents, and the recommendations of the review committee of the specialty committee.~~

(3) Review Procedure - The applicant's examination and petition shall be submitted to a panel consisting of a minimum of at least three members of the specialty committee (the review committee of the specialty committee). All information will be submitted in blind form, the staff being responsible for deleting any identifying information on the examination or the petition. The review committee of the specialty committee shall review the ~~entire examination~~ petition of the applicant and determine whether ~~. The review committee of the specialty committee shall recommend to the board that~~ the grade of the examination should remain the same or be changed. The review committee shall make a written report to the board setting forth its recommendation relative to the grade on the applicant's examination and an explanation of its recommendation.

(4) Decision of the Board - ~~A panel of the board shall consider the applicant's petition for grade review either by hearing or by a review only of the applicant's submitted materials.~~ The board shall consider the petition and the report and recommendation of the review committee and shall certify the applicant if it determines that the applicant has satisfied all of the standards for certification.

~~(5) Hearing Procedures - The rules set forth in Rule .1801(a)(8) above shall be followed when an applicant petitions for a hearing before the board for a grade review of his or her examination.~~

~~(6) Burden of Proof: Preponderance of the Evidence - The panel of the board shall apply the preponderance of the evidence rule in determining whether the applicant's grade on the examination should remain the same or be changed. The burden of proof is upon the applicant.~~

(c) ...

.1905 Alternatives to Lecture-Type CLE Course Instruction

(a) Teaching - Preparation and presentation of written materials at an accredited CLE course will qualify for CLE credit at the rate of six hours of credit for each hour of presentation as computed under Rule .1904 of this subchapter. In the case of joint preparation and/or presentation, each preparer and presenter will receive a proportionate share of the total credit available. Repeat presentations of substantially the same materials will ~~not~~ qualify for ~~additional~~ one-half the credit available for the initial presentation. Instruction at an academic institution will qualify for three hours of CLE credit per semester hour taught in the specialty field.

(b) Publication - .... ■

Client Security Fund Reimburses Victims

At its October 28, 2008, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $269,704.24 to 19 clients who suffered financial losses due to the misconduct of North Carolina lawyers, approved payment of an additional $2,975 in one of those claims if further documents are provided, reduced an award made last quarter from $836.40 to $244.31, and redirected an award made in April 2008 to an escrow holder designated by the board. The board also received information on 73 claims filed against Michelle Shepherd pursuant to an expedited process adopted by the board in July 2008. The 73 claims paid since the last board meeting totaled $26,122.76.

The new payments authorized were:

1. An award of $1,500.00 to a former client of Charles Alston Jr. of Charlotte. The board found that Alston was retained to handle an appeal of a civil matter involving a license reinstatement for the client and failed to perfect the appeal. Alston was disbarred on October 2, 2008, but has yet to be served with the order. The board previously reimbursed one other Alston client $200.

2. An award of $1,500.00 to a former client of James Baum Jr. of Raleigh. The board found that Baum was retained to represent the client in collecting on a purchase money note owed. Baum failed to provide any valuable legal services for the $1,500.00 the client advanced to pay Baum. Baum's license was administratively suspended on July 13, 2007.

3. An award of $250.00 to a former client of James Baum Jr. The board found that Baum was retained to handle a traffic matter for the client. But, by that time, Baum had been served with an order suspending him administratively and thereafter could not be found. Baum failed to provide any valuable legal services for the $250.00 the client paid.

4. An award of $590.00 to a former client of Terry Brown of Charlotte. The board found that Brown was retained to handle two accident claims for the client. Brown settled both claims and deposited the funds into his trust account but failed to make all the proper disbursements. Brown's trust account was insufficient to pay all of his client's obligations due to misappropriation. Brown died on July 21, 2001. The board previously reimbursed 17 other Brown clients a total of $58,207.65.

5. An award of $17,611.60 to a former client of Thomas D. Brown of Charlotte. The board found that Brown was retained to handle a real estate closing. Brown failed to make disbursements to the applicant from the closing proceeds. Brown's trust account balance was insufficient to pay all of his client's obligations due to misappropriation. Brown was disbarred on March 5, 2008. The board authorized payment of $2,975 to three others listed on the HUD-1 if those others file appropriate documents. The board had previously reimbursed a client of Thomas D. Brown $12,255.26.

6. An award of $1,384.00 to a former client of Thomas D. Brown. The board found that Brown received a refund of a rent bond that should have been disbursed to the client. Brown wrote the client a check from his trust account. By the time the client attempted to cash the check, Brown's trust account had been frozen by the State Bar.

7. An award of $1,000.00 to a former client of Thomas D. Brown. The board found that Brown was retained to handle a real estate closing. A check to the client was caught in the freeze of Brown's trust account.

8. An award of $22,000.00 to a former client of Tonya Crew of Roanoke Rapids. The board found that Crew was retained to secure a contract for sale of a client's timber. Crew embezzled the sale proceeds. Crew was disbarred on October 6, 2008.

9. An award of $95.00 to a former client of William Durham, formerly of Winston-Salem. The board found that Durham was retained to handle a civil matter for the client. The client paid Durham an attorney fee and separately paid $95.00 for the filing fee. Durham never filed anything in the matter prior to his retirement, and failed to refund the filing fee to the client.

10. An award of $937.94 to former clients of Robert Hume III of Cedar Point. The board found that Hume conducted five real estate closings for these clients but failed to purchase title insurance for any of the closings. Hume also failed to give the clients a check that represented a reimbursement of an overpayment and a reduction in attorney fee. At the time of his death, Hume's trust account balance was insufficient to cover all of his clients' obligations due to his dishonest conduct. Hume died on November 10, 2005. The board had previously reimbursed seven other Hume clients a total of $5,025.56.

11. An award of $485.00 to a former client of Michelle Mallard of Charlotte. The board found that Mallard held escrow funds from a real estate closing to cover repairs a development company was to complete. Mallard failed to disburse the escrowed funds once the repairs were completed and her trust account balance was insufficient to cover all of her clients' obligations due to misappropriation. Mallard was disbarred on September 24, 2008.

12. An award of $40,493.22 to an estate over which John McCormick of Chapel Hill was executor. McCormick embezzled those funds from the estate account. McCormick was disbarred on May 11, 2007. The board previously reimbursed 13 other McCormick clients a total of $253,362.30.

13. An award of $100,000.00 to a former client of Michelle Shepherd of West Jefferson. The board found that Shepherd was retained to handle a real estate closing, but failed to pay off the client's prior mortgage from the closing proceeds. Shepherd's trust account balance was insufficient to cover all of her clients' obligations due to misappropriation. Shepherd was disbarred on July 25, 2008.

14. An award of $70,416.48 to a former client of Michelle Shepherd. The board found that Shepherd was retained to handle the closing of a construction loan. Shepherd failed to pay off the client's former loan or the title premium from the closing proceeds.

15. An award of $1,000.00 to an applicant who suffered a loss from a closing conducted by Michelle Shepherd. The board found that Shepherd held funds in a fiduciary capacity

for the benefit of the applicant as a capital improvement fee. However, the check that Shepherd wrote to the applicant from her trust account did not clear.

16. An award of $466.00 to a former client of Michelle Shepherd. The board found that Shepherd was retained to handle a real estate closing for the client. Shepherd failed to obtain and pay the title insurance premium.

17. An award of $3,500.00 to a former client of Teresa Smallwood of Windsor. The board found that Smallwood was retained to handle a criminal matter on the same day the State Bar filed an amended complaint against Smallwood for serious misconduct. Smallwood failed to provide any valuable legal services to the client and did not reimburse any of the unearned legal fee. Smallwood was disbarred on May 19, 2007.

18. An award of $1,500.00 to a former client of Marsha Stone of Asheville. The board found that Stone was retained to represent the client on felony charges. Prior to doing anything on the client's case, Stone checked herself into rehab for drug addiction and surrendered her license for misappropriation. Stone failed to refund the unearned fee to the client. Stone was disbarred on October 9, 2008.

19. An award of an additional $4,975.00 to a former client of Donald Parker of Benson. At the April 2007 meeting, the board found that Parker was retained to assist the client in paying off her debts and credit card expenses, but Parker misappropriated a portion of the funds resulting in some of the checks written by Parker not clearing. The board reduced the amount claimed by the total of checks listed in Parker's checkbook stubs, but agreed to reconsider the claim if those checks did not clear. An analysis of Parker's trust account statements showed that some of the checks failed to clear. Parker was disbarred on July 21, 2006. The board previously reimbursed seven Parker clients a total of $222,234.53, including the previous reimbursement to this client.

Other action taken:

At its July 2008 meeting, the board made an award of $836.40 to a former client of John Lee of Charlotte payable to those listed on the client's HUD-1. After the July meeting, counsel found that two insurance companies had been paid from another account and had issued policies. The board reduced its previous award to $244.31. Lee was disbarred on December 9, 2006. The board previously reimbursed five other Lee clients a total of $79,890.28.

At its April 2008 meeting, the board authorized an award of $5,000.00 held in escrow on behalf of former clients of D. Scott Turner of Mooresville. The funds were to be disbursed as agreed to by the parties to the escrow agreement. After the parties could not agree, the board reconsidered this matter and directed the funds to be sent to a lawyer who agreed to be the escrow holder. Turner was disbarred on December 21, 2006. The board previously reimbursed five other Turner clients a total of $30,393.13.

The board received a list of the 73 claims approved by its counsel for payment pursuant to an expedited procedure approved by the board at its July 2008 meeting for claims made by former clients of Michelle Shepherd for title insurance premiums retained by Shepherd that were never paid to a title insurance company. The 73 claims paid this quarter totaled $26,122.76. Shepherd was disbarred on July 25, 2008. ■

Proposed Ethics Opinions (cont.)

no meritorious legal arguments to be made. In juvenile cases, the Supreme Court has ruled that an Anders-type brief may not be filed. *In re Harrison*, 136 N.C. App. 831, 526 S.E. 2d 502 (2000). Therefore, the appellate lawyer will advise the client that the appeal is without merit and ask the client to withdraw the appeal. If the client refuses to do so, the lawyer files a motion to withdraw from the representation.

In appeals of juvenile cases, when the client has indicated that he or she wants to appeal and is prepared to sign the notice of appeal as required by N.C. R. App. P. 3A, is it unethical for the appointed trial lawyer to sign the notice of appeal to preserve the client's right to appeal even if the trial lawyer has doubts as to the merit of the appeal?

Opinion:

No, it is not unethical for the trial lawyer to sign the notice of appeal to preserve an indigent client's right to appeal in a juvenile case. Whether signing the notice violates Rule 11 of the Rules of Civil Procedure is outside the purview of the Ethics Committee. Nevertheless, the committee can opine on whether the lawyer is in violation of the prohibition in Rule 3.1 of the Rules of Professional Conduct on bringing a proceeding or asserting an issue unless there is a basis in law and fact for doing so that is not frivolous. In TPR and other juvenile cases, the state's interest in ensuring due process for parents is demonstrated by the statutory requirement for court appointed-trial and appellate counsel for indigent parents. In light of this public policy, and when the notice of appeal serves to preserve the client's right to appeal but does not assert a particular legal argument, it is not unethical for the appointed trial lawyer for an indigent parent to sign a notice of appeal although the trial lawyer may not believe that the appeal has merit. Moreover, the trial lawyer may rely upon the court-appointed appellate lawyer's subsequent review of the record to determine whether to pursue the appeal. ■

2009 Meeting Schedule

Below are the 2009 dates of the quarterly State Bar Council meetings.

January 20 - 23	Marriott Raleigh City Center, Raleigh
April 21 - 24	Marriott Raleigh City Center, Raleigh
July 21 - 24	Carolina Hotel, Pinehurst
October 20 - 23	Marriott Raleigh City Center, Raleigh
	(Election of officers October 22, 11:45 a.m.)

State Bar Swears in New Officers


McMillan


Weyher


di Santi

McMillan Installed as President

Raleigh attorney John B. McMillan was installed as president of the North Carolina State Bar. He was sworn in by North Carolina Supreme Court Justice Sarah Parker at the State Bar's Annual Meeting on Thursday, October 23, 2008, and officially took office at the conclusion of the council meeting on October 24, 2008.

McMillan earned both his BA and JD degrees from the University of North Carolina at Chapel Hill. He was admitted to the practice of law in 1967. That same year he joined the firm at which he still practices—Manning, Fulton & Skinner, PA—where he concentrates on legislative advocacy, administrative law, and general litigation.

McMillan became a State Bar Councilor in 1997 and has chaired the Issues Committee, Legislative Committee, and Grievance Committee. Prior to his election as a councilor, he served on the Disciplinary Hearing Commission and was its chair.

In addition to serving on the State Bar Council, McMillan is a member of the North Carolina Bar Association, Wake County Bar Association, American Bar Association, and the North Carolina Academy of Trial Lawyers. Last year he was president of the Law Alumni Association of UNC.

McMillan has received several awards, including the Wake County Bar Association's Joseph Branch Professionalism Award and its President's Award. He has also been recognized by Legal Services of North Carolina.

McMillan's civic responsibilities include service upon the North Carolina Clean Water Management Trust Fund's Board of Trustees and the North Carolina Museum of Natural Sciences Board of Directors. He also chaired the board of the North Carolina Chapter of the Nature Conservancy.

Weyher Elected President-Elect

Raleigh attorney Barbara B. (Bonnie) Weyher was elected as president-elect of the North Carolina State Bar. She was sworn in by North Carolina Supreme Court Justice Sarah Parker at the State Bar's Annual Meeting on Thursday, October 23, 2008, and officially took office at the conclusion of the council meeting on October 24, 2008.

Weyher earned both her BA and JD degrees (with honors) from the University of North Carolina at Chapel Hill. She was admitted to the practice of law in 1977.

After beginning her career in a New York City law firm, she returned to North Carolina in 1979 to join the firm of Young, Moore, Henderson & Alvis, PA, in Raleigh. In 1983, she became one of the founding partners of Yates, McLamb & Weyher, LLP. Weyher is also a certified mediator and mediates cases on a regular basis.

Weyher has substantial involvement in local and state bar organizations. She served on the North Carolina State Bar Council from 1998 through 2006. She has chaired the Grievance Committee, Ethics Committee, Issues Committee, Facilities Committee, and the Authorized Practice of Law Committee. She has also served on the Executive Committee, and Publications Committee. Ms. Weyher has chaired (2005-2006) the Litigation Section of the North Carolina Bar Association. She is a past-president of the Wake County Bar Association. She is also a member of the American Bar Association, Defense Research Institute, North Carolina Association of Women Attorneys, and North Carolina Association of Defense Attorneys.

di Santi Elected Vice-President

Boone attorney Anthony S. (Tony) di Santi was elected as vice-president of the North Carolina State Bar. He was sworn in by North Carolina Supreme Court Justice Sarah Parker at the State Bar's Annual Meeting on Thursday, October 23, 2008, and officially took office at the conclusion of the council meeting on October 24, 2008.

Mr. di Santi served in the United States Army from 1966 through 1969. For his service in Viet Nam he was awarded the Silver Star and Purple Heart.

He earned a BS degree in Business Administration from the University of North Carolina at Chapel Hill and JD degree from the Wake Forest University School of Law. He was admitted to the practice of law in 1975 and currently practices with the Boone firm of di Santi Watson Capua & Wilson.

di Santi has substantial involvement in local and state bar organizations. He has served as president of the Watauga County Bar Association and is a member of the North Carolina Bar Association, North Carolina Association of Defense Attorneys, and the American Bar Association. He has served on the North Carolina State Bar Council since 2001. di Santi chaired the Publications Committee and Authorized Practice Committee, and was vice-chair of the Grievance Committee, Administrative Committee, and Issues Committee.

Mr. di Santi has been active in numerous civic organizations including Blowing Rock Rotary Club, Boone Kiwanis Club, Blowing Rock Community Foundation, Blowing Rock State Company, Blowing Rock Charity Horse Show Foundation, and the Blowing Rock Chamber of Commerce, on which he served two terms as president. From 1984 through 1992 he served on the Blowing Rock Town Council. ■

Resolution of Appreciation of
Irvin W. Hankins III

WHEREAS, Irvin W. "Hank" Hankins was elected by his fellow lawyers from the 26th Judicial District in January 1997 to serve as their representative in this body. Thereafter, he was elected for three successive three-year terms as councilor; and

WHEREAS, in October 2005 Mr. Hankins was elected vice-president, and in October 2006 he was elected president-elect. On October 19, 2007, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. Hankins has served on the following committees: Appointments, Consumer Protection, Lawyers' Trust Accounts, Ethics, Professionalism, Authorized Practice, Executive, Issues, Ethics 2000, Special Committee on UPL and Bar Admissions, Administrative, Grievance, Legislative, Legislative Paralegal Study, Finance and Audit; and

WHEREAS, Hank Hankins has, as president of the North Carolina State Bar, led the agency with remarkable clarity of purpose and effectiveness. His steadfast persona, his faithful example, and his compelling rhetoric have greatly inspired the State Bar's staff, its governing council, and its constituent members. He has, from the very inception of his presidency, focused our attention upon the legal profession's tradition of service, its continuing importance in a time of transition, and its fundamental covenant of trust with the public. In so doing, he has invested these three concepts: "tradition," "transition," and "trust" with powerful professional resonance and alliterative immortality; and

WHEREAS, Hank Hankins, in venerating the Bar's tradition of service, made that particular indicia of professionalism the centerpiece of many of his public pronouncements. Notably, in furtherance of that ideal, he has facilitated the development of the State Bar's new Distinguished Service Award through which the profession will in years to come be able to recognize officially those lawyers who best exemplify the ethic of service to the community; and

WHEREAS, realizing that the legal profession and the society it serves are in the midst of a time of great transition and economic dislocation, Hank Hankins has reminded his fellow lawyers of their responsibility ever to maintain the rule of law and to see that all citizens have meaningful access to justice. To that end, he has overseen the implementation of mandatory IOLTA, a mighty program through which the lawyers of North Carolina are able collectively to fund legal services for thousands of impoverished fellow citizens; and

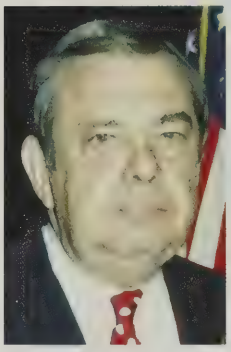
WHEREAS, Hank Hankins has understood and professed that self-regulation can be successful only if predicated upon the public's trust. To justify and fully warrant the public's continuing confidence in the State Bar, he has championed a number of policy initiatives to strengthen the State Bar's disciplinary program. These have included the expansion of the professional staff, the acquisition of sophisticated data processing technology, the adoption of a new "statute" of limitations, the development of sensible guidelines for the imposition of sanctions, and the implementation of temporal benchmarks for the processing of grievances. Taken together, these measures have demonstrably improved the profession's ability to regulate its members, and have kept faith with the people of North Carolina; and

WHEREAS, having discerned that the State Bar's existing facilities would, in light of the profession's burgeoning membership, soon be inadequate to house the agency's staff and its various operations, Hank Hankins appointed a special committee of the council to plan for the acquisition of a new headquarters. Aided and informed by his clear vision, the Facilities Committee labored throughout the year to conceptualize a suitable structure, and ultimately approved a preliminary rendering that appears to embody architecturally a fine sense of tradition in a transitional design that is sure to inspire trust. Upon the building's completion, and for decades thereafter, the State Bar's headquarters will no doubt serve as a monumental testament to the leadership of the man who foresaw its necessity, and its appearance, so clearly—Hank Hankins.

NOW, THEREFORE, BE IT RESOLVED that the council of the North Carolina State Bar does hereby publicly and with deep appreciation acknowledge the strong, effective, and unselfish leadership of Hank Hankins, and expresses to him its debt for his personal service and dedication to the principles of integrity, trust, honesty, and fidelity.

BE IT FURTHER RESOLVED that a copy of this resolution be made a part of the minutes of the annual meeting of the North Carolina State Bar and that a copy be delivered to Irvin W. Hankins III.

Harrelson Receives Professionalism Award



Wallace "Wally" C. Harrelson has been selected as the 2008 recipient of the Chief Justice's Professionalism Award. This award is presented annually by the chief justice of the North Carolina Supreme Court at the Annual Meeting of the North Carolina State Bar.

Harrelson earned an AB degree in Political Science in 1959 from Duke University, and his LL.B. degree from Duke University School of Law in 1962. He started his law practice in Guilford County as a clerk-solicitor (district attorney) in the Guilford County Domestic Relations Court. After that, Wally entered the private practice of law in Greensboro, where he had a varied practice including indigent court-appointed work.

On January 1, 1970, Harrelson began what has become a lifetime commitment when he was appointed the first public defender for North Carolina. He still holds this position and has nurtured one of the top public defender offices in the state year after year.

Harrelson's devotion to the court system, and to indigent representation in particular, can be seen through his tireless efforts to improve the system. He has participated in many committees involving the indigent system. These committees have been enhanced by his independent thinking, toughness, and vision in bringing about the best indigent representation.

Harrelson's professionalism reaches much farther than his outstanding legal advocacy skill and superior management style. He has continuously been deeply involved in volunteerism in a variety of community activities. Among these activities are past chairman of the Area Board of Mental Health, Mental Retardation, and Substance Abuse of Guilford County, appointed by the Guilford County Board of County Commissioners. Also, Harrelson is a present member of the executive committee of Fellowship Hall, Inc. (a private, nonprofit organization for the treatment of chemical dependency). He served a total of eight years on the Board of Directors of the Youth Services Bureau of Guilford County (now Youth Focus) and twice served as chairman and/or president of the board. Harrelson is a former member and vice-chairman of the Board of Directors for Women's Day Care Center (now Summit House), and is a past member of the Board of Substance Abuse Services of Guilford. He is a former member of the Chief Justice's Committee on the Defense of Indigents and past member of the Chief Justice's Administration of Justice Study Committee.

Harrelson has been honored with many legal awards, including the prestigious Outstanding Lawyer of the Year Award from the Greensboro Criminal Defense Lawyer's Association in 1983, one of only three lawyers ever to receive that honor. In 1983 Harrelson also received the Order of the Long Leaf Pine Award from Governor Hunt. ■

Lawyer Assistance Program (cont.)

The application forms for appointment included questions about treatment for alcoholism, which I answered truthfully. When I was interviewed by the appointment committee, no one asked me about my recovery. I was not appointed that year or the next time I renewed my application, and I didn't know exactly why.

Undaunted, in the twelfth year of my recovery I decided to run for an elected position on the bench. My entire campaign—except for the manager—was run by people I had met during recovery. To say that the experience of my recovery gave me courage and strength to do this is an understatement. The emotional support I received from my friends in recovery and the members of the State Bar's Lawyer Alcoholism Committee was beyond any that a political committee or party could have provided. I found that the alcoholism recovery principles worked even under the most stressful circumstances. They gave me the energy and the attitude to finish the race. I won the election.

It has now been many years since I've had a drink, and my life today is unrecognizable from the old one. I live by a set of spiritual principles that have seen me through the many difficult days of recovery. My recovery process has not only put my life back on track, but I also have healed and grown in ways far beyond anything I could ever have imagined in an alcoholic haze. I have a close, loving relationship with my daughter. I have sober, caring friends. I have a busy life and a career that continues to amaze and astonish me. I am happy and relieved of the stress and worry that plagued me in the years that I drank.

My tenure on the bench has been exciting, challenging, and rewarding. The opportunities to be of service to others have been too numerous to recount here. Every day I see how the results of the disease brings so many people into contact with the legal system. I can only hope that reading this personal story of my alcohol abuse and subsequent recovery will encourage others to reach out for help themselves or for another lawyer who is suffering. ■

This article appeared in the June 2008 issue of In Sight *and is reprinted with permission of the author.*

Governor Endorses Bar's Acquisition of State Property

Governor Easley has directed the Department of Administration to seek approval from the Council of State for the State Bar's acquisition of property within the state government complex for its new headquarters. The property in question is situated at the corner of Blount and Edenton Streets in downtown Raleigh. Although currently dedicated to surface parking, the land in question, which is located just south of the Governor's Mansion, has a rich history. It was the original site of Meredith College. At its meeting in December, the Council of State will be asked to approve a 99-year lease of the subject property for nominal consideration. If the Council of State approves the State Bar's acquisition of the property, architects will be hired and the design process will begin early in 2009. Construction will be timed so as not to interfere with several other projects within the state government complex that will be constructed contemporaneously. Bar leaders have expressed the hope that the new headquarters will be available for occupancy within the next three to four years. A determination has not yet been made as to how the project will be financed, although it is anticipated that the proceeds of sale of the Bar's current building, totaling several million dollars, will be used to provide a significant down payment.

The governor's decision to endorse and facilitate the Bar's acquisition of the property in question was announced at the State Bar's Annual Dinner in conjunction with a celebration of the 75th anniversary of the agency's creation. The governor, and his chief of staff, Franklin Freeman, both of whom are licensed attorneys and active members of the Bar, were praised by incoming President John B. McMillan for their assistance in facilitating the State Bar's acquisition of the property. ■

Notice to All Attorneys

The registration of **Retirement and Estate Services** was revoked by the North Carolina State Bar Council on October 24, 2008. Therefore, no licensed North Carolina attorney can participate in the plan.

2009 Appointments to Boards and Commissions

January Council Meeting

Lawyer Assistance Program Board (3-year terms) There are three appointments to be made. David W. Long, Sheryl T. Friedrichs, and Barbara A. Scarboro are eligible for reappointment.

April Council Meeting

Legal Aid of North Carolina (LANC) (3-year terms) There is one appointment to be made. Raymond E. Owens Jr. is eligible for reappointment.

North Carolina Courts Commission (4-year terms) There is one appointment to be made. Thomas R. West is eligible for reappointment.

Disciplinary Hearing Commission (3-year terms) There are five appointments to be made. John Breckenridge Regan, Theodore C. Edwards III, C. Colon Willoughby Jr., and Robert F. Siler are eligible for reappointment. T. Richard Kane is not eligible for reappointment.

July Council Meeting

Board of Legal Specialization (3-year terms) There are three appointments to be made. Jeri L. Whitfield and Carl W. Davis Jr. (public member) are eligible for reappointment. Dallas C. Clark Jr. is not eligible for reappointment.

IOLTA Board of Trustees (3-year terms) There are three appointments to be made. Robert F. Baker, Marion A. Cowell, and Michael C. Miller are not eligible for reappointment.

October Council Meeting

Client Security Fund Board (5-year terms) There is one appointment to be made. Janice M. Cole is not eligible for reappointment.

Board of Law Examiners (3-year terms) There are three appointments to be made. Judge A. Leon Stanback, William K. Davis, and Samuel S. Woodley Jr. are eligible for reappointment.

Board of Continuing Legal Education (3-year terms) There are three appointments to be made. Michael K. Pratt and Heather C. Baker are eligible for reappointment. Judge Robert B. Rader is not eligible for reappointment.

NC LEAF (1-year terms) There is one appointment to be made. Victor J. Boone is eligible for reappointment.

State Judicial Council (4-year terms) There is one appointment to be made. Gary W. Thomas is not eligible for reappointment.

Board of Paralegal Certification (3-year terms) There are three appointments to be made. Renny W. Deese, John M. Harris, and Tammy Moldovan are eligible for reappointment. ■

Fifty-Year Lawyers Honored

As is traditional, members of the North Carolina State Bar who are celebrating the 50th anniversary of their admission to practice were honored during the State Bar's Annual Meeting at the 50-Year Lawyers Luncheon. One of the honorees, Laurence A. Cobb, addressed the gathering, and each honoree was presented a certificate by the president of the State Bar, Irvin W. (Hank) Hankins III, in recognition of his or her service. After the ceremonies were concluded, the honorees in attendance sat for the photograph below. ■

First Row (Left to Right): David M. Clark; Jesse L. Butler Jr.;William A. Powell; Giles R. Clark; H. Grady Barnhill Jr.; L. Bruce McDaniel; Graham Phillips Jr.; Don C. Pendleton; Edward S. Holmes; standing just behind Mr. Holmes is John G. Lewis Jr. *Second Row (Left to Right):* Thomas S. Bennett; Keith Snyder; George W. Hamrick; Franklin Godette; Harold D. Downing; Anne Shea Ransdell; William F. Maready; Charles H. Yarborough Jr.; Howard C. Broughton; standing on floor beside Mr. Broughton is Larry J. Dagenhart. *Third Row (Standing, Left to Right):* Henry H. Isaacson; Troy C. Holmesley Jr.; John R. Hudson Jr.; James B. Richmond; Clyde Smith Jr.; L. S. Blades III; Richard M. Wiggins; Herbert L. Toms Jr.; W. Ritchie Smith Jr. *Fourth Row (Standing Left to Right):* Robert E. Riddle; F. Gordon Battle Jr.; Herbert G. Browne; Laurence A. Cobb.

No Dues Increase for 2009

At its meeting on October 24, the North Carolina State Bar Council reviewed the agency's financial position and cash projections, and determined that it would not be necessary to increase dues for the purposes of 2009. The amount of the annual membership fee, which was set at $265 last October, will remain the same. At the same meeting, the council endorsed a recommendation from the Client Security Fund's Board of Trustees to the Supreme Court of North Carolina that the amount of the annual assessment in support of the fund, currently set at $25, remain at the same level.

The annual membership fee and the Client Security Fund assessment will both be invoiced to the membership in early December. The fees are due on January 1 and delinquent after June 30.

The December invoice will also require payment of the judicial surcharge, the $50 assessment imposed upon each active member of the State Bar by the General Assembly in support of the Judicial Campaign Fund. ■

State Bar to Present Distinguished Service Awards

The North arolina State Bar is pleased to announce the creation of the North Carolina State Bar Distinguished Service Award program. The Distinguished Service Awards will honor current and retired members of the North Carolina State Bar who have demonstrated exemplary service to the legal profession. Such service may be evidenced by a commitment to the principles and goals stated in the Preamble to the Rules of Professional Conduct, for example: furthering the public's understanding of and confidence in the rule of law and the justice system; working to strengthen legal education; providing civic leadership to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel; seeking to improve the administration of justice and the quality of services rendered by the legal profession; promoting diversity and diverse participation within the legal profession; providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; encouraging and counseling peers by providing advice and mentoring; and fostering civility among members of the bar.

Awards will be presented in recipients' districts, usually at a meeting of the district bar. The State Bar Councilor from the recipient's district will participate in introducing the recipient and presenting the certificate. Recipients of the Distinguished Service Award will also be recognized in the State Bar *Journal* and honored at the State Bar's annual meeting in Raleigh. Members of the bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, www.ncbar.gov. Please direct questions about the award to Carmen Hoyme at the State Bar office in Raleigh, (919) 828-4620. ■

Annual Reports of State Bar Boards

Board of Paralegal Certification

Submitted by Renny W. Deese

The Board of Paralegal Certification accepted the first application for certification on July 1, 2005. Since that date, almost 5,000 applications have been received by the board and I am proud to report that there are currently 4,439 North Carolina State Bar certified paralegals.

Last year, the program switched from certification based upon education and experience to certification based upon education and an examination. Paralegals who are certified upon successful passage of the exam have demonstrated knowledge in key practice areas and the necessary skills to provide competent assistance to lawyers. The first certification exam was administered on May 3, 2008. The passing percentage for the 81 applicants who sat for the exam was 65%. The second exam was administered on October 4, 2008, with 117 candidates approved to sit. We await the final grading of that exam.

The exam is written by the Certification Committee which is composed of seven exceptionally dedicated and hard-working paralegal educators, both lawyers and non-lawyers, who have devoted countless unpaid hours to the creation of a three-hour, 150 question, multiple-choice examination that is comprehensive, rigorous, and fair. The exam tests the following legal subjects: civil litigation, commercial law, criminal law, ethics, family law, legal research, real property, and wills, trusts, and estate administration; and the following practice domains: communication, organization, documentation, analysis, and research. The committee revises and updates the exam prior to each administration and works with a professional psychometrician to insure the validity and reliability of the test results. We are grateful for the volunteer service of the members of the Certification Committee.

To maintain certification, paralegals must demonstrate completion of the required annual continued paralegal education (CPE) credits. Certified paralegals must have six hours of CPE, including one hour of ethics, during each 12-month period of certification. We estimate that certified paralegals took over 20,000 hours of CPE in the last 12 months. This is a clear demonstration that one goal of the program has been met: (quoting from The Plan for Certification of Paralegals) "to improve the competency of those individuals [who are identified as certified paralegals] by establishing mandatory continuing legal education and other requirements of certification."

Over the past 12 months, the board has accomplished the following:

- Certified 221 paralegals (52 by exam).
- Recertified 3,308 paralegals.
- Through the work of a three-member panel of the board, heard and decided six appeals from denials of certification.
- Awarded lapel pins to every certified paralegal.
- Conducted voting for the two paralegal board vacancies.

I was appointed chair at the last council meeting succeeding Michael Booe, former councilor and the initial chair of the board. Mike helped to move the paralegal certification program from concept to a tremendously successful program that has been embraced by paralegals and the lawyers who employ them. At Mike's final meeting, the board adopted a resolution of appreciation for Mike. The following excerpts from the resolution demonstrate Mike's contribution to the paralegal certification program and the board's gratitude:

> ...as chair of the Legislative Study Commission, Mike, as the consummate diplomat, skillfully and successfully navigated the uncharted waters of paralegal reg-

ulation and brought the paralegals and lawyers serving on the commission to a safe harbor and common ground in the creation of The Plan for Certification of Paralegals, the first such plan in the nation, which plan was subsequently adopted, without dissent, by the State Bar Council and the North Carolina Supreme Court;... as chair of the board, Mike oversaw the creation of all of the procedures for administering the certification program, including the formulation of certification and recertification applications; adoption of rules on continuing paralegal education; appointment of the Certification Committee; development of procedures for processing applications and handling appeals; establishment of the highest standards of fairness in the review of applications for certification and recertification; and creation and administration of the first paralegal certification examination; ...

Mike's ability to be tactful while getting straight to the point, to disagree without being disagreeable, to rigorously analyze problems while maintaining a commonsense approach, to listen and build consensus when needed, to treat everyone involved with courtesy and respect, and his support for and dedication to the certification program, will be missed by the members of the board, the bar, and the paralegal profession (and the State Bar staff)....

The next time you see Mike, I hope that you will express your gratitude for this fine work, too.

Board of Legal Specialization

Submitted by Michael E. Weddington

The program of the State Bar to certify lawyers as specialists continues to grow. There are now 681 legal specialists in North Carolina. In two weeks, 58 lawyers will sit for specialty examinations in eight areas of specialization: bankruptcy, criminal law, estate planning and probate law, family law, immigration law, real property law, social security disability law, and workers' compensation law. Perhaps the most interesting statistic for the program this year is the number of lawyers who were recertified. That number is 102, many of whom were recertified for the third and fourth times.

One of the specialization program's most significant accomplishments this year is the development of proposed standards for a new specialty in elder law. As the population of baby boomers ages, the importance of good legal advice—about such things as health and long-term care planning; public benefits; surrogate decision making; and legal capacity—to older persons, their family members, representatives, and caregivers has become self-evident. Identifying lawyers who are experienced and skilled in elder law will not only help consumers, it will also help lawyers who need to refer an aging client to a competent elder law practitioner. The board urges you to approve the standards which are on the agenda for council action today.

Another board initiative that deserves special note is the engagement of Dr. Terry Ackerman, chair of the Educational Research Methodology Department (ERM) at the University of North Carolina-Greensboro, and other professors and graduate students in his department, to work with our specialty committees on the specialty exams. Also known as "psychometricians," Dr. Ackerman and his colleagues are experts in the statistical science of exam creation, administration, and scoring. Many members of the specialty committees—56 dedicated volunteer lawyers in total—attended a workshop on exam writing with Dr. Ackerman in the spring. Each year, one of the specialty exams will be statistically analyzed by graduate students working under the direction of Dr. Ackerman. The results of this analysis will be explained to the specialty committee and used to revise the examination. This year, the workers' comp exam was overhauled. Through this on-going relationship with the faculty of the ERM department at UNC-Greensboro, the validity and reliability of the specialty exams will be maintained.

In line with our goal of improving the specialty exams, last November was the first time that all eligible specialty exams could be taken on computer. Using computers is less stressful for many applicants, especially the younger lawyers, because they type faster than they write. In addition, the specialty committee members are especially appreciative of this innovation because objective questions are automatically graded by the exam software and, with regard to essay questions, reading printed answers is easier than deciphering the hand writing of many lawyers. For those who remain in the pen-and-paper age, we still allow applicants to hand write the exams.

The annual luncheon for certified specialists was held in March at the Washington Duke Inn on the campus of Duke University. It was a big success with over 50 specialists in attendance. The board recognized three outstanding specialists with the third annual presentation of its recognition awards. The awards were named in honor of past chairs of the Board of Legal Specialization. The Howard L. Gum Excellence in Committee Service Award, named in honor of current councilor Howard Gum, is given to a specialty committee member who consistently excels in fulfilling committee responsibilities. This award was presented to Jaye Meyer, a former chair of the Family Law Specialty Committee.

The James E. Cross Leadership Award is presented to a certified specialist who has taken an active leadership role in his/her practice area. Terri Gardner, past chair of the Bankruptcy Law Specialty Committee and a former member of the board, received the James E. Cross Jr. Leadership Award for her contribution to the practice of bankruptcy law.

The Sara H. Davis Excellence Award, named in honor of former councilor Sara Davis, is given to a certified specialist who exemplifies excellence in his/her daily work as a lawyer and serves as a model for other lawyers. Kirk Osborne, a criminal law specialist whose untimely death last year was a great loss to the profession, was posthumously presented with the Sara H. Davis Excellence Award. His wife and children gratefully accepted the award in his honor.

The board has two main objectives: identifying qualified practitioners to the public and increasing the competency of the bar. It continues to meet these objectives by establishing specialties in areas appropriate for certification and by applying reasonable and appropriate standards for certification that will protect the interests of the public. The board is meeting these objectives, I am pleased to report, while remaining on a firm financial footing. The board and all certified specialists greatly appreciate the continuing support and the assistance of the council.

Board of Continuing Legal Education

Submitted by Keith O. Gregory

I am pleased to report that 99% of the active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2007. By mid-March 2008, the CLE department processed and filed over 20,327 annual report forms for the 2007 compliance year. North Carolina lawyers took a total of 303,162 hours of CLE in 2007, or approximately 14 CLE hours on average per

lawyer. This is two hours above the mandated 12 CLE hours per year and a slight decrease from 2006 when lawyers took an extra four CLE hours on average.

This year, the board's work has focused on improving the rules and regulations governing the administration of the CLE program. On March 6, 2008, the Supreme Court approved amendments to the rules that will improve the administration of the program. These include amendments that allow 45 days for the processing of accreditation applications; require submission of only one set of written materials for accreditation; and charge interest at the legal rate on sponsor fees that are not remitted to the board within 30 days of the presentation of a course.

We are waiting for the Supreme Court's approval of several significant changes to the accreditation standards. These rule amendments will allow the board to accredit courses on diversity, "services to the underserved," and stress and stress management. The latter accreditation change is a result of the board's concern that existing courses on substance abuse and depression fail to educate lawyers on the stress that is often the precursor to and a component of substance abuse and mental health problems. To reduce the likelihood that a lawyer will fulfill all of the annual CLE requirements by taking such courses, the rule authorizes a maximum of three hours of CLE credit for any one course on stress or stress management.

Other proposed rule changes pending before the Court will improve our ability to enforce compliance with the CLE requirements by clarifying that the late-compliance fee is incurred when a notice to show cause is issued to a lawyer and eliminating the requirement of service pursuant to Rule 4 of the Rules of Civil Procedure in favor of service by registered or certified mail at the member's last address on record with the State Bar.

After a long struggle with the question of whether courses taught by a disbarred lawyer should be granted CLE credit, there seems to be consensus around a proposed rule that will deny credit to any course taught by a disbarred lawyer except a course in professional responsibility (including a course on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities). The proposed rule requires the lawyer's disbarment to be disclosed in the advertising for the course, thus allowing the consumer to chose whether to attend. A subcommittee of the Issues Committee has proposed this rule amendment, which is before you today with a request for publication, and it is supported by the CLE Board.

The board continues to operate on a sound financial footing and was able to provide $215,493.74 in funding for the support of the Lawyers Assistance Program. (The board supports LAP at $150,000 or an amount equal to 50% of the CLE department's projected expenses for the year—not including the LAP support—whichever is greater.)

Board member Susan Parrott of Raleigh is retiring this year. She has provided many hours of service to the CLE program over the last four years—especially as the board member assigned the thankless and time-consuming task of deciding whether to grant exemptions from the CLE requirements. Susan patiently read innumerable letters asking for leniency because the dog, the fax machine, or the legal assistant ate a lawyer's annual CLE report form.

Steve Coggins of Wilmington is also retiring from the board this year. Steve has been a strong advocate for educating lawyers on mental health problems that affect a lawyer's professional life and on maintaining balance between personal and professional commitments. Steve was instrumental in the board's request to amend the rules to allow CLE credit for courses on stress reduction.

Steve and Susan will be sincerely missed by the other members of the board and by the staff.

The board will continue to strive to improve the program of mandatory continuing legal education for North Carolina lawyers. We welcome any recommendations or suggestions that councilors may have in this regard. On behalf of the other members of the board, I would like to thank you for the opportunity to contribute to the protection of the public by advancing the competency of North Carolina lawyers.

Client Security Fund

Submitted by Fred H. Moody Jr.

Pursuant to the Rules of Administration and Governance of the Client Security Fund of The North Carolina State Bar (the "Fund"), the Board of Trustees submits this annual report covering the period October 1, 2007, through September 30, 2008.

The Fund was established by order of the Supreme Court dated October 10, 1984, and commenced operations January 1, 1985. As stated by the Supreme Court, the purpose of the Fund is ". . . to reimburse, in whole or in part in appropriate cases and subject to the provisions and limitations of the Supreme Court and [the] Rules, clients who have suffered financial loss as a result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina..."

Claims Procedures

The Fund reimburses clients of North Carolina attorneys where there was wrongful taking of the clients' money or property in the nature of embezzlement or conversion, which money or property was entrusted to the attorney by the client by reason of an attorney/client relationship or a fiduciary relationship customary in the practice of law. Applicants are required to show that they have exhausted all viable means to collect those losses from sources other than the Fund as a condition to reimbursement by the Fund.

Specific provisions in the Rules declare the following types of losses to be non-reimbursable:

1. Losses of spouses, parents, grandparents, children, siblings, partners, associates, or employees of the attorney.

2. Losses covered by a bond, security agreement, or insurance contract, to the extent covered.

3. Losses by any business entity with which the attorney or any person described in paragraph one above is an officer, director, shareholder, partner, joint venturer, promoter, or employee.

4. Losses which have been otherwise reimbursed by or on behalf of the attorney.

5. Losses in investment transactions in which there was neither a contemporaneous attorney/client relationship nor a contemporaneous fiduciary relationship.

All reimbursements are a matter of grace in the sole discretion of the board and not a matter of right. Reimbursement may not exceed $100,000 to any one applicant based on the dishonest conduct of an attorney.

The Board of Trustees

The board is composed of five trustees appointed by the council of the State Bar. A trustee may serve only one full five-year term. Four of the trustees must be attorneys admitted to practice law in North Carolina and one must be a person who is not a licensed attorney. Current members of the board are:

Fred H. Moody Jr., Chair, is a partner with the firm of Moody & Brigham, PLLC in Bryson City, North Carolina.

Janice McKenzie Cole, Vice-Chair, practices law in Hertford, North Carolina.

G. Thomas Davis Jr. practices law in Swan Quarter, North Carolina.

Sara H. Davis is with the firm of Westall, Gray, Connolly & Davis, PA, in Asheville, North Carolina.

Michael Schenck, the public member of the Board, is a former CFO of Penick Village in Southern Pines, NC, and is retired and living in Raleigh.

Subrogation Recoveries

It is standard procedure to send a demand letter to each attorney or former attorney whose misconduct results in any payment, demanding that the attorney either reimburse the Fund in full or confess judgment and agree to a reasonable payment schedule. If the attorney fails or refuses to do either, suit is filed unless the investigative file clearly establishes that it would be useless to do so.

In cases in which the defrauded client has already obtained a judgment against the attorney, the Fund requires that the judgment be assigned to it prior to any reimbursement. In North Carolina criminal cases involving embezzlement of client funds by attorneys, our counsel, working with the district attorney, is sometimes able to have restitution ordered as part of the criminal judgment.

Another method of recovering amounts the Fund pays to clients of a dishonest attorney is by being subrogated to the rights of clients whose funds have been "frozen" in the attorney's trust account during the State Bar's disciplinary investigation. When the court disburses the funds from the trust account, the Fund gets a pro-rata share.

During the year covered by this report, the Fund recovered $44,608.98 as a result of these efforts. Hopefully, our efforts to recover under our subrogation rights will continue to show positive results.

Claims Decided

During the period October 1, 2007 - September 30, 2008, the board decided 165 claims, compared to 183 claims decided the previous reporting year. Those 165 claims were based upon allegations of dishonest conduct by a total of 54 attorneys or former attorneys. As filed, they totaled $40,172,930.39. For various reasons under its rules, the board denied 65 of the 165 claims in their entirety. Of the 100 remaining claims, involving 20 attorneys or former attorneys, some were paid in part and some in full. Reimbursements of those 100 claims totaled $787,789.46, an average of $7,877.89 per claim. The largest amount paid on a single claim was $100,000.00, and the smallest amount paid was $10.00. The most common basis for denying a claim in its entirety is that the claim is a "fee dispute" or "performance dispute." That is, there is no allegation or evidence that the attorney embezzled or misappropriated any money or property of the client. Rather, the client feels that the attorney did not earn all or some part of the fee paid, or mishandled or neglected the client's legal matter. However meritorious the client's contentions may be, the Fund is not permitted to reimburse the clients in those cases because of the requirement in the rules that a wrongful taking of money or property in the nature of embezzlement or conversion must be shown.

Funding

The 1984 order of the Supreme Court that created the Fund contained provisions for an assessment of $50.00 to provide initial funding for the program. In subsequent years, upon being advised of the financial condition of the Fund, the Court in certain years waived the assessment and in other years set the assessment in varying amounts to provide for the anticipated needs of the Fund.

In 1999, the Supreme Court approved a $20 assessment per active lawyer that was to continue from year to year until circumstances required a modification. For the years beginning October 2004 and October 2005, due to significant embezzlements by a small number of attorneys, a modification was required and a $50 assessment was ordered. The year before last, the Supreme Court returned to an annual assessment, but increased that annual assessment to $25, the average assessment for the previous ten years. There is no need for a special assessment for calendar year 2009.

Conclusion

The Board of Trustees wishes to convey to the council our sincere appreciation to the staff personnel who have assisted us so effectively and generously during the past year. Without the continuous support of these people, our tasks would be much more difficult. We also express our appreciation to the bar of North Carolina for their continued support of the Client Security Fund and their efforts in reducing the incidents of defalcation on the part of a few members of our profession.

Lawyer Assistance Program

Submitted by Mark W. Merritt

It has been a busy and productive year for the North Carolina Lawyer Assistance Program ("LAP"). The State Bar's rule governing the Lawyer Assistance Program provides:

> .0601 Purpose
>
> The purpose of the Lawyer Assistance Program is to: (1) protect the public by assisting lawyers and judges who are professionally impaired by reason of substance abuse, addiction, or debilitating mental condition; (2) assist impaired lawyers and judges in recovery; and (3) educate lawyers and judges concerning the causes of and remedies for such impairment.

The LAP is fulfilling its mission. In its 29th year of operation, the LAP responded to numerous calls and had many personal interviews with lawyers, judges, and law students. These contacts resulted in a current caseload as of the end of September of 456 cases.

Since 2000, the LAP has assisted over 1,585 lawyers, or approximately 8% of the bar. The individuals we serve often include the Bar's most disadvantaged and distressed members.

Of our current files, 57% were opened as a result of voluntary contacts by a lawyer, judge, or law school student seeking assistance. The majority of the other files were opened after other members of the bar expressed concern to the LAP about an impaired lawyer. With respect to the cases that were opened, 57% involved psychological or mental health disorders, and 43% involved substance abuse or chemical addiction. We handled eight files which involved preadmission issues, which represents a decline from previous years. The decline in the LAP's informal involvement in helping the Board of Law Examiners during the past year may reflect a heightened awareness of the substantive issue of conditional admission that has been a topic of discussion among the Board of Law Examiners and the Bar's leadership. We would expect these preadmission inquiries to increase as the number of law students taking the bar exam continues to increase.

Last year the State Bar Council asked for there to be greater coordination between the Office of Counsel and the Lawyer Assistance Program in cases where the discovery or potential discovery of misappropriated client funds

might lead to a suicide risk. As a result of this increased coordination, the LAP has been proactive in seeking out lawyers facing the likelihood of disbarment to offer assistance. In at least two cases this outreach may have averted a suicide.

The LAP has participated during the past year in a "Well Being in the Workplace" survey sponsored by the North Carolina Consortium of Professional Recovery Programs ("CPRP"). The CPRP survey is still in progress and is being administered by Dr. Darcy Siebert, a professor at Florida State University. Once survey results are made available, the information will be sent to the LAP along with an analysis of the kinds of mental health issues that affect our lawyers. This data should be very helpful in assisting the LAP to better meet the needs of the lawyers we serve.

The LAP internet site remains an important source of information about the LAP and how to contact the program. During the year, the site registered 5,820 hits on the homepage. The website provides a listing of the members of the PALS Committee and the FRIENDS Committee, the two LAP peer group support committees, as well as information about depression and chemical addiction.

The LAP website also contains pages which provide a comprehensive list of resources and confidential self-tests for substance abuse and depression. In addition, the website provides information about the two annual training workshops for volunteers and a library of articles related to topics relevant to lawyer assistance.

As has been true over the years, the LAP network of volunteers and lawyer support groups provides a major part of the assistance given by the LAP to lawyers around the state. Without the extended volunteer network, it would be impossible for the LAP to be as effective as it has been during the past year. Staff and volunteer efforts have prevented or limited possible harm to the public in numerous instances. In cases where discipline is initially deferred, or the lawyer is operating under a stayed suspension, the LAP's intervention has offered the opportunity to identify and resolve the root problems out of which the discipline issue arose and furthered the Bar's mission of protecting the public.

Details of the North Carolina Lawyer Assistance Program

The LAP provides assessment, referral, intervention, education, advocacy, and peer support services for all North Carolina lawyers and judges.

The LAP is designed to help lawyers find a way to address a wide range of health and personal issues, including, most commonly, alcohol/drug abuse, stress/burnout, depression, anxiety, and compulsive disorders of all kinds, including those involving food, sex, work, gambling, and the Internet.

All calls are strictly confidential.

Educational Outreach

The North Carolina Lawyer Assistance Program believes that intervention begins with educating all segments of the bench, bar, and law schools about addiction, mental health issues, compulsive disorders, and recovery from those conditions. The LAP efforts have continued this year through presentations at law schools, ethics CLE workshops, and local and specialty bar association meetings.

The Lawyer Assistance Program sponsored several presentations and video presentations across the state in 2007-2008.

LAP Information Flyers/Brochures

- LAP (four-fold) flyer: North Carolina Lawyer Assistance Program
- PALS: Alcoholism and Other Chemical Addictions
- FRIENDS: Depression and Mental Health
- A Guide for North Carolina Judges: Dealing with an Impaired Lawyer
- Black Lawyers Association Leadership Urges Members Use of Lawyer Assistance Program
- Breaking the Silence - Lawyer Suicide
- A Chance to Serve
- Welcome to the Legal Profession
- Women Bar Leaders Encourage Use of Lawyer Assistance Program
- Impairment in the Legal Profession - A guide for New Bar Councilors and Local Bar Leaders

LAP flyers/brochures are included in new lawyer packages, volunteer packages, requests for information by prospective clients, and in CLE programs. Approximately 2,135 LAP flyers/brochures were distributed in the presentations made this past year with 300 Welcome flyers/brochures distributed to new admittees.

The LAP book "A Lawyer's Guide to Healing" has been distributed as part of the LAP outreach.

Articles

PALS and FRIENDS columns were submitted quarterly to the State Bar *Journal*. Monthly articles were submitted to the *Campbell Law Observer* to develop awareness of the Lawyer Assistance Program and issues that may lead to impairment in lawyers.

Volunteer Development

Substantial efforts continue to be devoted to volunteer development. As of September 30, 2008, there were 132 PALS volunteers and 93 FRIENDS volunteers.

Training

The FRIENDS 9th Annual Conference and Workshop was held on February 9, 2008 at the Pine Needles Lodge and Conference Center, Southern Pines. The 2008 conference was a joint program with BarCares and the Quality of Life Committee of the North Carolina Bar Association

The ABA Annual CoLAP Conference was held in Nova Scotia, Canada, October 1 - 6, 2007.

The 28th Annual PALS Meeting and Workshop was held October 12-14, 2007, at the Broyhill Inn & Conference Center, Appalachian State University, Boone. Chief Justice Sarah Parker was in attendance. Guest speakers included John Ishee and Kristi and Todd Webb.

Upcoming Events for 2009

The FRIENDS 10th Annual Conference will be held at Pine Needles Lodge & Conference Center, Southern Pines on February 9, 2009. This conference will be in conjunction with BarCares and the NC Bar Association Quality of Life Committee.

The 29th Annual PALS Conference and Workshop will be held November 7-9, 2008 at the Holiday Inn SunSpree, Wrightsville Beach.

Local Volunteer Meetings

The Lawyer Assistance Program continues the development of local volunteer meetings to provide greater continuity and support in meeting the needs of lawyers new in recovery and allowing volunteers the chance to grow in their own recoveries. Local volunteer support meetings for PALS and FRIENDS are held in several locations. Details on meeting locations are available on the LAP website—www.nclap.org.

Volunteer Communication

The LAP sends out *The Intervenor*, a newsletter, to all PALS volunteers three to four times a year to enhance communication within the volunteer network. Volunteers have

contributed by writing articles for *The Intervenor* and by sharing personal stories in the *Campbell Law Observer* (CLO) and the State Bar *Journal*.

Case Management

Case management has four different stages:

1. Investigation - Initial contact with the program begins the investigative phase. All efforts at this stage are directed to determine if the lawyer has a problem LAP can assist with, the nature of the problem, and if the lawyer is willing to get assistance.

2. Treatment/Stabilization - This phase begins when a lawyer understands that he/she needs help and agrees to obtain assistance.

3. Monitoring/Aftercare - This begins when a lawyer has completed inpatient/outpatient treatment or initial therapy consultations and is stabilized in a recovery program. In this stage the volunteer support is most active and helpful.

4. Inactive Status - A file is placed on inactive status when the active role of the LAP terminates. This may occur when the lawyer completes an initial two-year contract of monitoring and no longer needs a monitor, or when the lawyer dies, moves out of state, is disbarred, or no longer wants any assistance.

Case Management Statistics

Statistics about the program reflect the number of people getting help; they do not reflect the time it takes to deliver that assistance. A self-referral might be appropriate for a phone evaluation and be immediately directed to a treating counselor to meet his/her needs. On the other hand, a third-party initiated investigation may take weeks to complete and, even then, the file may be put on hold for months in order for there to be sufficient opportunity to ascertain if the lawyer truly needs assistance. Every effort is made not to interfere by offering assistance unless there is meaningful evidence suggesting that it is needed or the lawyer is actively seeking help. Even then, in the addictions area, assistance when offered is often initially refused, and the LAP may spend months building up trust so that assistance can be received when the lawyer finally becomes receptive. Like cases in law practice, the problem cases can often take tremendous amounts of time to move forward. Our approach is never to give up on offering help, but often that means waiting until a situation ripens. To be able to make client access to the LAP easier, the state of North Carolina is divided into three sections. Don Carroll handles cases in the western part of the state, Towanda Garner handles the piedmont section, and Ed Ward handles the eastern part of the state. Any lawyer may seek the help of any member of the professional staff. The continued expansion and utilization of trained volunteers will remain a key component in our future ability to bring assistance to more lawyers who need it.

Outcome Data

The cases that have been coded as successfully handled are a broad category that emphasizes help to the lawyer. First and foremost, this includes cases where the client had a significant problem, entered into a recovery contract with the LAP, and successfully completed the contract. In addition, it includes cases where there was informal assistance given and a positive result achieved for the lawyer. This category also includes (1) cases where an investigation was made, or the client contacted and offered assistance, with the result that it was determined that no further action was needed on the client's behalf; and (2) cases that were investigated, the investigation was inconclusive as to the need for assistance, and the case was closed after two years when there did not appear any new information that help was needed. The success category does not include lawyers who died, went on disability status, were disbarred, or moved out of state. Although these categories reflect elimination of potential harm to the public, they do not show that a lawyer was actually helped. We regard outcomes as unsuccessful where a contract was entered into and the client failed in his or her efforts to achieve recovery, where a client went to treatment and left treatment and did not pursue recovery, and cases where it was unsuitable for the LAP to provide assistance.

Since 2000, there have been 886 active case files closed. Of these, a successful outcome was obtained in 751 and an unsuccessful outcome occurred in 135, for a favorable success rate of 86%. Of these closed cases, 510 were for addiction issues and 376 for mental health. For addiction cases, there is a success rate of 86%, and for the mental health a success rate of 84%.

The LAP is currently handling 459 files. There are 198 PALS and 261 FRIENDS files.

PALS Referrals:	FRIENDS Referrals:
Friend - 4	Friend - 3
Family- 10	Family - 3
DHC - 2	DHC - 5
Bar Staff - 11	Bar Staff - 22
Other Lawyer - 50	Other Lawyer - 49
Self - 67	Self - 137
Firm - 14	Grievance - 17
Judge - 11	Firm - 10
DA - 1	Another LAP - 2
Bar Examiner - 1	Judge - 4
Grievance - 10	Local Bar - 2
Unknown - 6	EAP - 1
Law School - 2	Investigators/SCA - 1
Local Bar - 1	Unknown - 1

Governance

Under the rules of the State Bar Council, the LAP is governed by a nine member board. The State Bar Council appoints the members of the Lawyer Assistance Program Board in three different groups: Three councilors of the State Bar; three persons with experience and training in the fields of mental health, substance abuse, and addiction; and three bar members who currently serve as volunteers to the LAP. In order to avoid any perception that the LAP Program is not entirely separate from the disciplinary functions of the State Bar, no member of the Grievance Committee may serve on the LAP Board.

There have been two new additions to the LAP Board during this past year. These are Margaret J. McCreary, a Bar Councilor from Durham, and David W. Long, a Bar Councilor from Raleigh.

The current members of the LAP Board are: Mark W. Merritt, Chair and a councilor; Fred F. Williams, Vice-Chair, LAP and volunteer; Sheryl T. Friedrichs, volunteer; Paul A. Kohut, volunteer; David W. Long, councilor; Margaret J. McCreary, councilor; Burley B. Mitchell Jr.; Dr. Al Mooney; and Barbara Scarboro.

LAP Board Meetings Scheduled for 2008

The LAP Board meets quarterly during the time of the council meetings except in the fall, when the LAP Board meets, if necessary, at the time of the Annual PALS Meeting and Workshop.

LAP Board meetings are usually scheduled for lunchtime on the Thursday of the week the council meets. The 2009 schedule for the council is listed below:

January 20-23, 2009
Marriott Raleigh City Center, Raleigh

April 21-24, 2009
Marriott Raleigh City Center, Raleigh

July 21-24, 2009
Carolina Hotel, Pinehurst, NC ■

February 2009 Bar Exam Applicants

The February 2009 Bar Examination will be held in Raleigh on February 24 and 25, 2009. Published below are the names of the applicants whose applications were received on or before November 5, 2008. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Fred P. Parker III, Executive Director, Board of Law Examiners, PO Box 2946, Raleigh, NC 27602.

John Hampton Aaron
Virginia Beach, VA
Faheemah Mahasin Abdullah
Charlotte, NC
Melissa Sue Aguanno
Shaker Heights, OH
David Michael Alban
Charlotte, NC
Stephanie Michelle Davis Albright
Charlotte, NC
Brian Geoffrey Alexander
Apex, NC
Khurrum Syed Ali
Raleigh, NC
Tara Disy Allden
Pittsboro, NC
Dawnwin Howard Allen
Charlotte, NC
Scott Keith Ames
Waxhaw, NC
Joyanne M. Amisano
Hampstead, NC
Sir-Christopher J. Anderson
Morrisville, NC
Frances Kelly Atkins
Wilmington, NC
Tasha Dene' Auton
Conover, NC
Christopher James Autry
Charlotte, NC
Thomas Lenoir Avery III
Charlotte, NC
Kristen Jai-Mil Bell
Winston-Salem, NC
Edward Allen Backus
Jacksonville, FL
Amanda Todd Bailey
Fort Mill, SC
Kathryn Elizabeth Baird
Atlanta, GA
Jennifer Catherine Bakane
Greensboro, NC
Benjamin Andrew Barco
Wilmington, NC
Tiffany Marie Bartholomew
Cumming, GA
Christopher Ervin Bazzle
Charlotte, NC
Ryan Joseph Beadle
Arden, NC
Ethan Owen Beattie
Chapel Hill, NC
Gretchen Chantelle Bellamy
Durham, NC
Mark Garrett Bennett
Huntersville, NC
Michael Mitchell Berger
Cary, NC
Tedros Habteyohannes Berhe
Hallandale Beach, FL
Jonathan Mark Berry
Charlotte, NC
Nishant Bhatnagar
South Portland, ME
Martha Ann Bird
Oak Ridge, NC
Shani Jaha Bonaparte
Durham, NC
Dennis Lloyd Boothe
Raleigh, NC
Gary James Bowers
Thomasville, NC
Ira Braswell
Louisburg, NC
Gregory Paul Braun
Homestead, FL
David Charles Brown
Balsam, NC
Elizabeth Frances Bunce
Lexington, NC
Nicole Judd Buntin
Greenville, SC
Craig Donald Burch
Winston-Salem, NC
Brook Leigh Butler
Fort Pierce, FL
Giles Cameron Byrd
Hallsboro, NC
Kathleen Cunningham Clary
Ccharlotte, NC
Michael Shannon Coblin
Charlotte, NC
Jazmin Gabrielle Caldwell
Charlotte, NC
Jacob Frederick Calvani
Charlotte, NC
Harrell Gustave Canning III
Lynchburg, VA
Paul Augustus Capua
Boone, NC
Sarah Townes Carmichael
Laurinburg, NC
Peter Hugh Carney
Delray Beach, FL
Sarah Ann Carr
Durham, NC
Charles Austin Carroll
New Bern, NC
Stephen Lacy Cash
Golden, NM
Michael Robert Cashin
Winston-Salem, NC
Alicia Dawn Cassidy
Jacksonville, FL
Tina Marie Cecil
Durham, NC
Victoria Alexis Cejas
Rougemont, NC
John Richard Champion
Chapel Hill, NC
Nathan Clifton Chase Jr.
Charlotte, NC
Erica Nicole Cheaves
Charlotte, NC
Justin Allen Chin
Monroe, NC
Nalina Victor Chinnasami
High Point, NC
Do Yun Cho
Falls Church, VA
Jeong Yeong Cho
Seoul, Korea
Jinwook Choi
Buford, GA
Sheena Joy Cobrand
Raleigh, NC
Monica Coc Magnusson
Raleigh,, NC
Christine Blythe Coffron
Charlotte, NC
Kathryn Gusmer Cole
Charlotte, NC
James Barr Coleman
Bozeman, MT
Laura Anne Collins
Holly Springs, NC
William Bradford Collins
Winston-Salem, NC
Tamara Renee Cornish
Huntersville, NC
Ashley Brooke Cornwell
Columbia, SC
Shednichole Marquise Cotton
Durham, NC
Troy Michael Cronk
Cary, NC
Kevin Lamont Crosby
Greensboro, NC
Jennifer Joyner Dacey
New Bern, NC
James Tyler Dancy
Kannapolis, NC
Dene Marie Davis
Winston-Salem, NC
Stephanie Frisch Davis
Oriental, NC
Kimberly Denise Deal
Charlotte, NC
Jose Gladstone Dees
Brandywine, MD
Matthew Richard Deutsch
Salisbury, NC
Dina Mary Di Maio
Raleigh, NC
Brian Nicholas Donley
Greensboro, NC
Kelly Scott Donohue
Clayton, NC
Christopher Glenn Blow Dozier
Raleigh, NC
Deborah Whittle Durban
West Columbia, SC
Sherod Hampton Eadon III
Columbia, SC
Howard Jamaal Edwards
Cherryville, NC
Michael Eugene Evans
Myrtle Beach, SC
Pandora Shea Farmer
Cary, NC
Mitchell Ross Feld
Charlotte, NC
Victoria Elizabeth Felden
Cary, NC
Kristen Elizabeth Finlon
Charlotte, NC
Michelle Bitterman Fish
Lyndhurst, OH
David Blake Fisher
Chapel Hill, NC
Kathleen Amber Foley
Holly Springs, NC
Kristen Traulsen Forbes
Mooresville, NC
Guy Louis Forcucci
Charlotte, NC
Elizabeth Clare Franks
Asheville, NC
Benjamin Paul Fryer
Charlotte, NC
Melba Lisa Garcia
MI, MI
Jimmy Garg
Angier, NC
Mary Anne Garvey
Winston-Salem, NC
Antonio Frontell Gerald
Lansing, MI
Aimee Katherine Gibbs
Pittsboro, NC
Ashley Elizabeth Tennent Gilreath
Asheville, NC
John Charles Gilson
Charlotte, NC
Marc Steven Goldberger
Raleigh, NC
Carissa Ann Graves
Burlington, NC
Valerie Lavet Green
Greensboro, NC
Thomas Moore Gremillion
Chapel Hill, NC
Kevin Slate Griffin
Charlotte, NC
Rachael Mara Groffsky
Lansing, MI
Rachel Settles Gunther
Hertford, NC
Roberto Guzman
Morrisville, NC
Lynell Erica Gwaltney
Rock Hill, SC
Michaela Skvara Hudson
Raleigh, NC
Allen Richard Hunt
Summerfield, NC
Philip Keith Hackley
Raleigh, NC
Kenneth Haley
Columbia, MD
Suzanne Rouse Haley
Charlotte, NC
Kenneth Slocumb Hall
Lexington, NC
Michael DeWayne Hall
Concord, NC
Matthew Cline Halverstadt
Charleston, SC
Abigail Maxwell Hammond
Raleigh, NC
Christian Watson Hancock
Birmingham, AL
Michael Scott Harrington
Linwood, NC
A'twar Patrice Harris
Raleigh, NC
Gladys Harris
Durham, NC
Kellie Farrington Harris
Chapel Hill, NC
Wendelyn Romesha Harris
Raleigh, NC
Donna Ann Hart
Altamonte Springs, FL
Nichole Monique Hatcher
Columbia, MD
Rachael J. Hawes
Concord, NH
James Monroe Hawhee
Athens, GA
Catherine Maria Schanz Hayes
South Royalton, VT
Kathryn Frances Henderson
Apex, NC
Edward Lee Hicks
Winston-Salem, NC
Kristopher Joel Hilscher
Fuquay-Varina, NC
Lisa Marie Hoffman
Fort Lauderdale, FL
Lanetta Holloway
Durham, NC
Jamie Tara Horowitz
Charlotte, NC
Mary Anson Horowitz
Atlanta, GA
Chun Hu
Chapel Hill, NC
William John Hudak Jr.
Saugus, MA
Edward Christopher Ingram
Blythewood, SC
Cheryl M. Samuel Jones
Charlotte, NC
Bethany Leigh Jackson
Clearwater, FL
Harriet D. W. Jackson
Mint Hill, NC
Sharifa Kibibi Jarrett
Cornelius, NC

Charles Gregory Jeane
Avon, NC
Angelina Holden Jennings
Mebane, NC
Kwangchul Ji
Seoul, Korea
Jessica Monique Johnson
Morrisville, NC
Lisa Marie Johnson
Matthews, NC
Jeffrey Thane Jones
Julian, NC
Margaret Murphy Kane
Atlanta, GA
John William Kasiski Jr.
Severna Park, MD
Samantha Margaret Katen
Raleigh, NC
Kevin Philip Kearney
Charlotte, NC
Jana Marie Kelly
Charlotte, NC
Richard Forrest Kern
Wilmington, NC
Douglas H. Kim
Charlotte, NC
Christopher Dayton King
Greenville, SC
Tamzin Rose Kinnebrew
Durham, NC
William Grier Kiser
Kings Mountain, NC
William Howard Kroll
Durham, NC
Alexis Rose Kropp
Charlotte, NC
Rashmi Kumar
Goldsboro, NC
Matthew Terrence Lee
Asheville, NC
Johnny K Lam
Greensboro, NC
Lisa Jo Lambert
Chapel Hill, NC
Zeno Bascum Lancaster
Canton, NC
Shannon Marie Lando
Fort Mill, SC
Kim Sa Le
Raleigh, NC
Melissa Carrie LeVine
Raleigh, NC
Joon Kil Lee
East Meadow, NY
Seung-Hyun Lee
Clifton, VA
Kelly Mahealani Leong
Raleigh, NC
Anjelica Ruth Lewis
Manteo, NC
Dorothy Yvonne Lewis
Raleigh, NC
Tong Liu
Washington, DC
Donald Lee Loper
Concord, NC
Andrew Francis Lopez
Washington, DC
Kerry Layne Lowery
Grover, NC
Mary Louise Lucasse
Chapel Hill, NC
Patricia Guilday Lynch
Fort Mill, SC
Bianca Deshera Mack
Dumfries, VA
Joseph Mancilla
Dania Beach, FL
David James Martin
Las Vegas, NV
Joseph A Martinez
Valdese, NC
Jack Russel McCaffery III
Charlotte, NC
John David McCally
Washington, DC
Elizabeth Susanne McCurry
Simpsonville, SC
Matthew Scott McGonagle
West Palm Beach, FL
Katherine Elizabeth McMahon
Charlotte, NC
Cara Brooke McNeill
Southern Pines, NC
Debora Marie McNichol
Raleigh, NC
Marion Elizabeth McQuaid
Birmingham, AL
Maryam Monfared Mehrabani
Raleigh, NC
Steven Lester Meints
Orlando, FL
Patrick Philippe Mevs
Valley Stream, NY
Carla Miller-James
Charlotte, NC
Rachel Ann Molinoski
Raleigh, NC
Lillie Mae Moore
York, SC
Adrian Moore-Pleasant
Chapel Hill, NC
Lisa Laney Moorehead
Charlotte, NC
Charlene Aletha Morring
Chesapeake, VA
Nolen Elizabeth Morton
Washington, DC
Edwin Albert Moseng
Falls Church, VA
Richard William Munch
Pittsboro, NC
Sahana Murthy
Chapel Hill, NC
Andrea Mae Nichols
Sneads Ferry, NC
Jennifer Alexandra Nancarrow
Charlotte, NC
Naydi Concepcion Nazario
San Juan, PR
Issac R. Nelson
Knightdale, NC
Lisa Jan Nesbitt
Apex, NC
John Joseph Nestico
Charlotte, NC
Caleb Roger Newton
Fleetwood, NC
Cameo Nicole Nichols
Charlotte, NC
Gina Marie Nilson
Spring Lake, NC
Charlene Norwich
Durham, NC
James Michael O'Dell
Kitty Hawk, NC
Yoko Onishi
Yokohama, Japan
Elizabeth Sublette Ostendorf
Raleigh, NC
Leticia Mercedes de Carida Padilla-Morales
Raleigh, NC
Christine Pai
Greensboro, NC
Belinda Ann Paris
Charlotte, NC
Judith A. Parker
Winston-Salem, NC
Emily Linville Heun Pate
Saxapahaw, NC
Minalkumari Pravinkumar Patel
Monroe, NC
Urmiben K Patel
Charlotte, NC
Rhonda Lynn Patterson
Charlotte, NC
Roy Douglas Patterson
Leland, NC
Brione Berneche Pattison
Charlotte, NC
Lindsey Hope Payne
Apex, NC
Rishona Monique Peace
Durham, NC
Adrienne Claire Peacock
Richmond, VA
Jeanne Ann Pennebaker
Cornelius, NC
Chasidy Nicole Phelps
Winston-Salem, NC
Todd Haywood Phillips
La Jolla, CA
Robert Alan Pohl
Simi Valley, CA
Emily Diana Pontious
Raleigh, NC
Thomas Edward Powers III
Charlotte, NC
Eric Miles Pratt
Durham, NC
Meghan Elizabeth Beeler Pridemore
Wake Forest, NC
Sarah Elizabeth Prince
Lake Waccamaw, NC
Timicia Lashae Robinson
Oklahoma City, OK
Kenya Davis Rogers
Charlotte, NC
Shaghayegh Ramezanian
Lansing, MI
Frank Rappa
Greensboro, NC
Johanna Litaker Reimers
Charlotte, NC
Susan Groves Renton
Wilmington, NC
Kristina Gough Reynolds
Winston-Salem, NC
Cecil Morris Richardson
Melbourne, FL
Donald Cameron Rininger III
Winston-Salem, NC
Brenda Rivera-Sanchez
Raleigh, NC
Brian Ashley Roberson
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The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611